

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

In re	§	
	§	
WESTMOUNT GROUP, INC.	§	Case No. 21-30633-HCM-11
	§	
Debtor.	§	

OBJECTION TO APPLICATION OF STEVEN SATHER
TO BE EMPLOYED AS ATTORNEY FOR
THE DEBTOR-IN-POSSESSION

TO THE HONORABLE H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY JUDGE:

Now comes the creditor ALBERT FLORES (hereinafter "FLORES") in these Subchapter V of Chapter 11 proceedings, and through his attorney undersigned files this Objection to the Application of STEVEN SATHER to be employed as counsel for the Debtor WESTMOUNT GROUP, INC. in this case, and would show as follows:

1.

Mr. SATHER's representation of WESTMOUNT GROUP, INC. began in State Court proceedings on July 16, 2021 when he filed a Petition in Intervention for WESTMOUNT GROUP, INC. that is hereto attached in copy as Exhibit "A."

BACKGROUND

2.

The action in the 327th District Court was begun by FLORES as a suit, primarily against the Defendant KEYVAN PARSA (hereinafter "PARSA"), to compel him to return, as an unjust enrichment, an overpayment of approximately \$720,000 at a real estate closing at WESTSTAR TITLE COMPANY ("WESTSTAR TITLE") on June 30-July 1, 2020.*

* FLORES and PARSA were Co-Initial Directors in the seller entity, MONTOYA PARK

3.

It appears that Mr. SATHER had been informed that WESTMOUNT GROUP, INC. was the owner of two money market certificates at WELLS FARGO BANK, in amounts of “at least” \$700,000 and “at least” \$338,000, and that the 327th District Court had entered several orders about what would have to be done with those funds. In chronological sequence, those orders were:

- a) An Agreed Temporary Restraining Order (“TRO”) dated January 4, 2021, that PARSA and MONTOYA PARK PLACE, INC. would cease concealing the whereabouts of the funds and would make no alienations of them. In connection with the TRO, PARSA and MONTOYA PARK PLACE, INC. showed the 327th District Court statements from WELLS FARGO BANK showing the money

PLACE, INC. The property being sold was Tract 3, Johannsen Subdivision (hereinafter “Tract 3”), to IDEA PUBLIC SCHOOLS for \$1.95 million. PARSA closed his part of the closing on June 30, 2020. FLORES closed his part on July 1, 2020. Separate closings were necessary because there had never been an organizational meeting for MONTOYA PARK PLACE, INC. No officers had been elected, no stock had been issued, no by-laws drafted and approved. PARSA had obtained a Certificate of Incorporation on February 5, 2020, but he never made any capital contribution. FLORES’ capital contribution was title to Tract 3, on February 9, 2020. FLORES had foreclosed his second-lien note against Tract 3 with a bid of \$558,000 on February 4, 2020. The first-lien note on Tract 3 was held by RIGHT IMMIX CAPITAL, LLC (hereinafter “RIGHT IMMIX”). The balance still owing on it, as of the WESTSTAR TITLE COMPANY closing June 30-July 1, 2020 was approximately \$720,000.00. The RIGHT IMMIX note should have been picked up on the title commitment, but WESTSTAR TITLE missed it. FLORES went to his part of the closing on the morning of July 1, 2020, expecting to see a seller’s statement figure of about \$1,109,000.00 cleared by MONTOYA PARK PLACE, INC. Instead the figure was \$1,829,295.40. FLORES knew something was wrong, but decided to talk to PARSA about it. FLORES went to see PARSA the next day, July 2. PARSA had opened a checking account at WESTERN HERITAGE BANK in the name of MONTOYA PARK PLACE, INC. PARSA was the only authorized signatory on the account, and PARSA had the only checks. PARSA had instructed WESTSTAR TITLE to wire the closing proceeds to the WESTERN HERITAGE BANK account. The funds arrived there on July 1, 2020. FLORES had “done the math” by the time he met with PARSA, and FLORES realized the RIGHT IMMIX first lien note had not been paid off by WESTSTAR TITLE. FLORES told PARSA they should put the money back with WESTSTAR. PARSA would not hear of it. He told FLORES that MONTOYA had paid \$10,000 for a title policy and was covered by the insurance for WESTSTAR’s mistake; and that he (PARSA) had so many losses to his co-shareholder DEBORAH JORDAN in the development of TRACT 3, that the money was rightfully his to keep. FLORES then told PARSA that he (FLORES) wanted no part of keeping the \$720,000 windfall, that PARSA was on his own if he tried keeping it, and that all he (FLORES) wanted was his half of the legitimate proceeds, plus reimbursement for monthly payments he had made to RIGHT IMMIX, to keep them current.

market certificates to be in the name of WESTMOUNT GROUP, INC., in the amounts of “at least” \$700,000 and “at least” \$338,000. *See* Exhibits “B-C” hereto attached.

- b) The TRO became an Agreed Temporary Injunction on January 27, 2021. Again the WELLS FARGO BANK certificates in the name of WESTMOUNT GROUP, INC. were shown to the Court.
- c) There followed a Motion to deposit the funds contained in the money market certificates, into the registry of the 327th District Court, which the Judge, The Honorable Thomas A. Spieczny, granted. PARSA and MONTOYA PARK PLACE, INC. moved to vacate the order to deposit. Hearings on the *vacatur* issue took place on May 18, 2021, June 8, 2021 and July 14, 2021, at which PARSA contended the following:
 - I. The Order to deposit was unnecessary because he was in complete control of the funds and they were absolutely safe. May 18, 2021 transcript, at pages 9-10, hereto appended as Exhibit “D.”
 - II. The story changed on June 8. The 327th District Court was informed there were three loans at WELLS FARGO BANK for which the certificates were collateral, and that there were 6.7% penalties for early withdrawals of the certificates. PARSA refused to divulge any maturity dates. *See* the transcript hereto attached as Exhibit “E” at its pages 31-55.
 - III. The hearing on July 14th again presented harms to the money market certificates that would occur, if the money had to be deposited into the registry. Judge Spieczny lowered the amount of the ordered deposit to \$750,000.

4.

Mr. SATHER's championing of WESTMOUNT GROUP, INC. and its interests in the money market certificates went further than just his Petition in Intervention and yet another Motion to Vacate the deposit Order. Mr. SATHER filed a Petition for Writ of Mandamus for WESTMOUNT GROUP, INC. in the Eighth Judicial District Court of Appeals, asking for a Mandate to Vacate the deposit Order. The Writ of Mandamus was denied, 18 days after it was filed. *See* Exhibits "F" and "G" hereto attached.

5.

The Defendants in the 327th District Court now are three: PARSA, MONTOYA PARK PLACE, INC., and WESTMOUNT GROUP, INC. Amended Petitions filed by FLORES on July 27, 2021, filed by WESTSTAR TITLE on August 19, 2021, and filed by FIDELITY NATIONAL TITLE INSURANCE on August 6, 2021, now name WESTMOUNT GROUP, INC. as the fraudulent transferee of PARSA or MONTOYA, under Tex. Business Commerce Code §§ 24.005 and 24.006.

6.

None of the Orders to Deposit was ever obeyed; all had deadlines that PARSA, MONTOYA, and WESTMOUNT GROUP, INC. ignored.

7.

A marked change occurred in the legal and factual position of WESTMOUNT GROUP, INC., however, when Mr. SATHER filed the Schedules and Statement of Affairs in this bankruptcy case. One can only surmise why the Schedules were filed 11 days late, and without any Motion for Extension of Time. What the Schedules and Statement of Affairs reveal, are the following:

- a) The Debtor has no money market certificates. *See* Schedule A/B.
- b) The Statement of Affairs reveals no transfers of money market certificates.

- c) Surprise! WESTMOUNT GROUP, INC. owes a promissory note for \$1,461,000 to MONTOYA PARK PLACE, INC., shown on Schedule D, supposedly secured by “all assets” of WESTMOUNT GROUP, INC. There is no financing statement on file in Austin. And “all assets” are ascribed a value of only \$794,000. The money market certificates are just gone, with no explanation. And PARSA never mentioned any note payable to MONTOYA PARK PLACE, INC. at any point in the 327th District Court proceedings.
- d) The note for \$1,461,000 is probably worthless. The Statement of Affairs reveals that WESTMOUNT GROUP, INC. has no income, and the § 1116 Statement (Doc.#12) shows no tax returns have been filed, and no statements of operation, balance sheets, or cash flow statements have been maintained.
- e) The Statement of Financial Affairs, part 6, shows that within five days of July 14, 2021 when the last Motion to Vacate the deposit order was denied in the 327th District Court and within 3 days of Mr. SATHER’s Plea in Intervention for WESTMOUNT GROUP, INC., Mr. PARSA orchestrated six transfers of real properties owned by the Debtor, having a combined CAD value of \$583,776, to insiders** in exchange for 100% financing promissory notes having a combined face amount of \$349,552.09,
- f) The assets left with the Debtor have nowhere near a value of \$794,000.
- g) The Schedules also reveal that there are no loans owed by WESTMOUNT GROUP, INC. to WELLS FARGO BANK

** These transfers to insiders are discussed in more detail, and with supporting documentation, in FLORES “Supplement to his Motion to Dismiss this case as a bad-faith filing, (Doc. #17), which is here incorporated by reference.

8.

Perplexed, and hoping for some explanation, the undersigned attorney wrote to Mr. SATHER on September 20, 2021, and got the reply hereto attached as Exhibit "H," in email string.

9.

Through concealed transfers of the money market certificates and transfers of real estate for worthless notes, Mr. PARSA has, within two months, depleted this estate with the obvious intention of defeating, hindering, and delaying creditors. Mr. SATHER may or may not be the architect of the rampant transfers, but he is certainly an apologist for them, unworthy as they are, and he appears to have been sworn to silence about the disappearance of the money market certificates he was trying to preserve in two other courts. The certificates are not glimpsed at all in a promissory note payable to MONTOYA for \$1.461 million.

10.


The employment of Mr. SATHER is not in the best interests of the estate. It appears a Chapter 7 Trustee should be appointed, who can be depended on to pursue all the evasions of Mr. PARSA as principal of the Debtor.

11.

Any hope the undersigned attorney had, that Mr. SATHER would, as capable and experienced bankruptcy counsel, be advising PARSA to gather assets to try to get creditors paid fairly in this case, disappeared when the Scheduled and Statement of Affairs were filed. And FLORES doubts that PARSA will listen to Mr. SATHER if he belated tries to get PARSA to restore the transferred assets. Mr. PARSA has just fired his third attorney in the 327th District Court proceeding. It seems Mr. PARSA will only go along with what he likes to hear.

WHEREFORE, PREMISES CONSIDERED, FLORES prays that the Application of STEVEN SATHER to be employed as counsel for the Debtor WESTMOUNT GROUP, INC. be denied for the reasons previously pleaded. Further FLORES prays for all other relief deserved in the circumstances, general or special, at law or equity.

Respectfully submitted this 1st day of October, 2021.

/s/ 
E.P. BUD KIRK
Texas State Bar No. 11508650
600 Sunland Park Dr.
Building Four, Suite 400
El Paso, TX 79912
(915) 584-3773
(915) 581-3452 facsimile
budkirk@aol.com

Attorney for ALBERT FLORES

CERTIFICATE OF SERVICE

I do hereby certify that on this 1st day of October, 2021, I did cause a copy of the foregoing Objection to Application of Steven Sather to be employed as counsel for the Debtor Westmount Group, Inc. to be mailed to Jim Rose, Attorney for the United States Trustee, 615 E. Houston, Ste. 533, P.O. Box 1539, San Antonio, TX 78295-1539; to Brad W. Odell, Subchapter V Trustee, 1500 Broadway, Ste. 700, Lubbock, TX 79401-3169; to Westmount Group, Inc., 810 N. Kansas Street, El Paso, TX 79902-5207; to Stephen W. Sather, 7320 N MoPac Expy, Ste. 400, Austin, TX 78731; to City of El Paso, c/o Don Stecker, 112 E. Pecan St., Ste. 2200, San Antonio, TX 78205-1588; to Weststar Title, LLC, c/o James W. Brewer, 221 N. Kansas, Ste. 1700, El Paso, TX 79901-1401; and to all persons who have been identified to date as parties in interest in this case, as shown on the attached list.

/s/ 
E.P. BUD KIRK

4063.007-AE-09272

Fidelity National Title Insurance Co.
c/o Shakira Kelley
6900 Dallas Parkway, Ste. 610
Plano, TX 75024-7164

Albert Flores
3605 Arcadia
El Paso, TX 79902

Keyvan Parsa
7604 Plaza Redonda
El Paso, TX 79912-8402

Keyvan Parsa, M.D. and
Montoya Park Place, Inc.
c/o Troy Chandler Brown
P.O. Box 221588
El Paso, TX 79913

Manny Jemente
Acala Investments
6044 Gateway Blvd. East
El Paso, TX 79905-2023

Shabnam Izadpanahi
36 Micmac Crescent
North York, ON M2H2K2

Ulrick Moise
Palacio de Paquim
C. Durango 2047
32575 CD Juarez
Chih. Mexico

Wells Fargo Business
P.O. Box 6995
Portland, OR 97228-6995

EXHIBIT “A”

CAUSE NO. 2020DCV2997

ALBERT FLORES	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
KEYVAN PARSA, M.D. and	§	
MONTOYA PARK PLACE, INC.	§	
	§	
Defendants,	§	
	§	
FIDELTIY NATIONAL TITLE	§	
INSURANCE COMPANY and	§	EL PASO COUNTY, TEXAS
WESTSTAR TITLE, INC.	§	
	§	
Intervenors/Third Party Plaintiffs,	§	
	§	
v.	§	
	§	
KEYVAN PARSA, M.D. and	§	
MONTOYA PARK PLACE, INC.,	§	
ALBERT FLORES, and DEBORAH	§	
JORDAN	§	
	§	
Third Party Defendants,	§	327TH JUDICIAL DISTRICT
	§	
and	§	
	§	
WESTMOUNT GROUP, INC.	§	
	§	
Intervenor-Third Party Defendant	§	

PLEA IN INTERVENTION OF WESTMOUNT GROUP, LLC

COMES NOW Westmount Group, Inc. Intervenor-Third Party Defendant, and files this Plea in Intervention and would shows as follows:

1. Intervenor Westmount Group, Inc. is a Texas corporation with its principal place of business in El Paso County, Texas.

2. Westmount Group, Inc. has a justiciable interest in this suit because it is the owner of funds which have been ordered to be tendered into the registry of the court.

3. Westmount Group, Inc. was incorporated on December 7, 2012. It has multiple shareholders. It is in the business of owning real estate and engaging in lending.

4. On July 17, 2020, Westmount Group, Inc. received two deposits of funds which it used to open brokerage accounts with Wells Fargo Bank in the amounts of approximately \$700,000 and \$338,000 as shown by Exhibit A.

5. On August 7, 2020, Westmount Group, Inc. signed a line of credit with Wells Fargo Bank, a true and correct copy of which is attached as Exhibit B.

6. On September 16, 2020, Plaintiff Albert Flores filed this action.

7. At a later date, Fidelity National Title Insurance Company and WestStar Title, LLC intervened in this action.

8. On or about April 21, 2021, Fidelity and WestStar filed a Joint Motion to Compel Interpleaders of Funds Into Registry of Court.

9. The Court granted the Motion without a hearing on April 26, 2021.

10. Although the funds sought to be interpleaded were the property of Westmount Group, Inc., Westmount was not made a party to the motion nor was it given notice.

11. Notwithstanding the filing of several motions for reconsideration, the Court has continued to order that the funds belonging to Westmount Group, Inc. be deposited into the registry of the Court.

12. Westmount Group, Inc. denies each and every, all and singular, of the allegations of Fidelity National Title Insurance and WestStar Title, Inc. and demands strict proof thereof.

WHEREFORE, PREMISES CONSIDERED, Westmount Group, Inc. prays that it be granted leave to intervene in this action and for such other and further relief, at law and in equity to which it may be entitled.

Respectfully Submitted,

BARRON & NEWBURGER, P.C.
7320 N. Mopac Expy, Suite 400
Austin, Texas 78731
(512) 649-3243
(512) 476-9253 Facsimile

/s/ Stephen W. Sather
Barbara M. Barron (SB No1817300)
Stephen Sather (SBN 7657520)
ATTORNEY FOR INTERVENOR

CERTIFICATE OF SERVICE

I certify that a true copy of this document was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on this the 16th day of July 2021.
All Counsel of record by electronic filing manager.

/s/Stephen W. Sather
Stephen W. Sather

**WELLS
FARGO****Asset
Management**

Institutional Class shares

100% Treasury Money Market Fund

All information is as of 12-31-20 unless otherwise indicated. Information is subject to change.

Key facts

S&P rating	AAAm
Moody's Rating	Aaa-mf
Share Class	Institutional
Investment Minimum	\$10 million
Ticker	WOTXX
CUSIP	94988A759
Gross Expense Ratio	0.23%
Net Expense Ratio	0.20%
Total fund assets	\$18.9 billion
Fund Manager	Laurie R. White, Jeffrey L. Weaver, CFA, Michael C. Bird, CFA
Fund Inception Date	12-03-90
Class Inception Date	10-31-14
Trading deadline	1 p.m. Eastern Time

Performance

Current yield as of 12-31-20

	7-day SEC yield (%)
	0.01
Month	30-day current yield (%)
December 2019	1.46
January 2020	1.42
February 2020	1.41
March 2020	0.91
April 2020	0.25
May 2020	0.09
June 2020	0.05
July 2020	0.05
August 2020	0.01
September 2020	0.01
October 2020	0.01
November 2020	0.01
December 2020	0.01

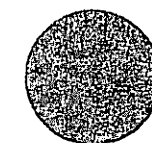
Average annual total returns (%) as of 12-31-20

1 year	3 year	5 year	10 year	Since Inception
0.36	1.35	0.98	0.49	2.30

The Manager has contractually committed through May 31, 2021, to waive fees and/or reimburse expenses to the extent necessary to cap the fund's total annual fund operating expenses after fee waivers at the amounts shown above. Brokerage commissions, stamp duty fees, interest, taxes, acquired fund fees and expenses (if any), and extraordinary expenses are excluded from the expense cap. The Manager may also voluntarily waive or reimburse additional fees and expenses, and such voluntary waivers may be discontinued or modified at any time without notice. Without these reductions, the fund's seven-day current yield would have been -0.09%. Prior to or after the commitment expiration date, the cap may be increased or the commitment to maintain the cap may be terminated only with the approval of the Board of Trustees. The expense ratio paid by an investor is the net expense ratio (the total annual fund operating expenses after fee waivers) as stated in the prospectus.

Figures quoted represent past performance, which is no guarantee of future results and do not reflect taxes that a shareholder may pay on an investment in a fund. Investment returns will fluctuate. The fund's yield figures more closely reflect the current earnings of the fund than the total return figures. Current performance may be lower or higher than the performance data quoted and assumes the reinvestment of dividends and capital gains. Current month-end performance is available at the fund's website, wfam.com.

Money market funds are sold without a front-end sales charge or contingent deferred sales charge. Other fees and expenses apply to an investment in the fund and are described in the fund's current prospectus.

**Principal investment strategies**

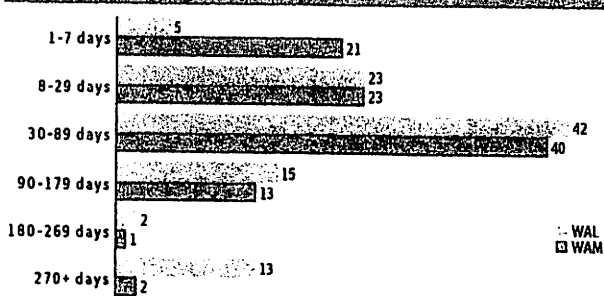
Seeks current income exempt from most state and local individual income taxes, while preserving capital and liquidity. Invests in high-quality, short-term money market instruments that consist of U.S. Treasury obligations.

Portfolio composition

% of portfolio

Treasury debt: (100)

Total: 100%

Portfolio maturity schedule (%)**Money market fund statistics**

Weighted average maturity: 53 days

Weighted average life: 110 days

Daily liquid assets: 100%

Weekly liquid assets: 100%

(Continued on next page.)



Advisors

Wells Fargo Advisors
MAC H0005-035
One North Jefferson Avenue
St. Louis, MO 63103

January 14, 2021

Westmount Group, Inc.
7604 Plaza Redonda Drive
El Paso, TX 79912-8402

RE: Verification of Assets for Account [REDACTED]

Dear Westmount Group, Inc.:

This letter confirms that:

- (i) You maintain a brokerage account with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), numbered [REDACTED] ("Account"), established on 07/20/2020;
- (ii) As of 01/13/2021, the Account maintains a total account value in excess of \$338,000.00.

This letter is provided for informational purposes and does not represent future Account value, if your Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within.

Sincerely,

Denise Gilles

Denise Gilles
Securities Operations Services Specialist 3
Client Mailings – Verifications & Inquiries

Investment and Insurance Products are:
• Not Insured by the FDIC or Any Federal Government Agency
• Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank Affiliate
• Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested



Institutional Class shares

WELLS
FARGOAsset
Management

100% Treasury Money Market Fund

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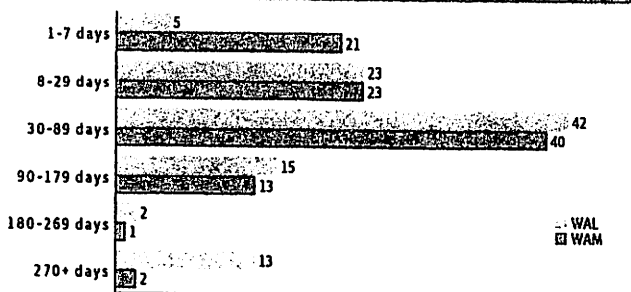
% of portfolio

☒ Treasury debt: (100)



Total: 100%

Portfolio maturity schedule (%)



Money market fund statistics

Weighted average maturity: 53 days

Weighted average life: 110 days

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Weekly liquid assets: 100%

(Continued on next page.)



Advisors

Wells Fargo Advisors
MAC H0005-035
One North Jefferson Avenue
St. Louis, MO 63103

January 14, 2021

Westmount Group, Inc.
7604 Plaza Redonda Drive
El Paso, TX 79912-8402

RE: Verification of Assets for Account [REDACTED]

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This letter is provided for informational purposes and does not represent future Account value, if your Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within.

Sincerely,

Denise Gilles

Denise Gilles
Securities Operations Services Specialist 3
Client Mailings – Verifications & Inquiries

Investment and Insurance Products are:
• Not Insured by the FDIC or Any Federal Government Agency
• Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank Affiliate
• Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested



Signature Page

WESTMOUNT GROUP, LLC
PRIORITY CREDIT LINE
7604 PLAZA REDONDA DR
EL PASO TX 79912-8402

Sub Firm #	BR Code	FA Code	Account Number
20	TK	TK2Y	XXXX -0087
Account Type			
C-Corporation-privately owned			

BY SIGNING THIS PAGE, I/WE ("I") ACKNOWLEDGE THAT I HAVE RECEIVED AND REVIEWED A COPY OF MY/OUR INVESTMENT PROFILE(S) INCLUDED IN THIS PACKAGE AND I HAVE READ AND AGREE TO BE BOUND BY THE AGREEMENTS AND/OR DOCUMENTS LISTED BELOW AND ANY OTHER AGREEMENTS AND DOCUMENTS THAT ARE INCORPORATED BY REFERENCE INTO SUCH AGREEMENTS AND/OR DOCUMENTS.

020 - New Account Application, WBS - 1001
024 - Supplemental Account Owner Documentation *
131 - Trusted Contact Authorization, WFA - ICED

<p>I UNDERSTAND AND ACKNOWLEDGE THAT INVESTMENTS AND INSURANCE PRODUCTS IN MY BROKERAGE ACCOUNT:</p> <ul style="list-style-type: none"> • ARE NOT INSURED BY THE FDIC OR ANY FEDERAL GOVERNMENT AGENCY • ARE NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, THE BANK OR BY ANY BANK AFFILIATE • ARE SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF PRINCIPAL AMOUNT INVESTED
--

I agree to promptly review and immediately advise Wells Fargo Advisors if any of the Owners and/or Account Profile information is not accurate or becomes inaccurate. I understand that Wells Fargo Advisors will rely on this information and that it is my responsibility to provide accurate and timely updates. My failure to do so may affect recommendations that are given to me related to my Priority Credit Line Account. If I decide to close or make changes to my Priority Credit Line Account, I will provide notification to Wells Fargo Advisors.

BY SIGNING THIS SIGNATURE PAGE, I/WE AUTHORIZE, ACKNOWLEDGE, AND AGREE TO THE TERMS AND CONDITIONS OF THE PRIORITY CREDIT LINE AGREEMENT AND TO THE FOLLOWING:

- **Stock Lending:** My securities may be loaned to Wells Fargo Clearing Services, LLC or to others.
- **Communications Consent:** My Financial Advisor may contact me/us as described in the Communications, Recording and Monitoring, Statements and Confirmations section of the Priority Credit Line Agreement.
- **PCL Account Holders:** In connection with my Priority Credit Line Account, Wells Fargo Bank, N.A. may establish a Bank Account in my/our name(s) and provide the banking-related services as set forth in the Priority Credit Line Account Agreement and may make any inquiry considered appropriate, including credit or other reports, to determine if the Bank Account should be opened. *I/We also agree to the terms of the dispute resolution program described in the Priority Credit Line Account Agreement relating to disputes specifically involving the Bank Account.*

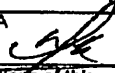
<p>W-9: (Not Applicable to W-8 Clients) Payer's Request for Taxpayer Identification Number</p> <p>Is this your correct Social Security/Tax ID? If not, please enter the correct number in the appropriate boxes.</p> <p><input checked="" type="checkbox"/> Social Security Tax ID: <input type="text" value="XXXX 3727"/></p> <p>or <input type="checkbox"/> Corrected Social Security/ Tax ID: <input type="text"/></p> <p>(Please omit dashes)</p>	<p>Under penalties of perjury, I certify that:</p> <ol style="list-style-type: none"> 1) The number shown on this form is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me); and 2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and 3) I am a U.S. citizen or other U.S. person; and 4) The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct. (NOT: The FATCA code is not applicable for accounts maintained in the United States.) <p><input type="checkbox"/> Check here if you have been notified by the IRS that you are currently subject to backup withholding because of unreported interest or dividends on your tax return.</p>
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THE INTERNAL REVENUE SERVICE DOES NOT REQUIRE YOUR CONSENT TO ANY PROVISION OF THIS DOCUMENT OTHER THAN THE CERTIFICATIONS REQUIRED TO AVOID BACKUP WITHHOLDING.

THIS PRIORITY CREDIT LINE AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE LOCATED ON PAGE 4, PARAGRAPH C. BY EXECUTING THIS DOCUMENT CLIENT IS AGREEING TO BE BOUND BY THE PRE-DISPUTE ARBITRATION CLAUSE. THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF A COPY OF THE PRIORITY CREDIT LINE AGREEMENT.

MUST SIGN AND DATE

I agree to the terms and conditions of this agreement and attest that the certification made of the W-9 above is true. (Not Applicable to W-8 Clients)

Signature of KEYVAN PARSA 	(Primary Owner) Use BLACK Ink only.	Title if Applicable Pres. L.	Date (Required) 08-07-20
I agree to the terms and conditions of this agreement.			
Signature of X		Title if Applicable	Date (Required)
Signature of X		Title if Applicable	Date (Required)
Signature of X		Title if Applicable	Date (Required)
Signature of X		Title if Applicable	Date (Required)

Investment and Insurance Products:

Not Insured by FDIC or any Federal Government Agency	May Lose Value	Not a Deposit of or Guaranteed by a Bank or any Bank Affiliate
Wells Fargo Advisors is a trade name used by Wells Fargo Clearing Services, LLC, a registered broker-dealer and non-bank affiliate of Wells Fargo & Company.		

591213 (Rev 11 - 11/20)

* Total Supplemental Form(s) - 1, 1086

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75530087

WFGESGN

0080811608001

EXHIBIT A

EXHIBIT “B”

Institutional Class shares

WELLS
FARGO

Asset
Management

100% Treasury Money Market Fund

All information is as of 12-31-20 unless otherwise indicated. Information is subject to change.

Key facts	
S&P rating	AAAm
Moody's Rating	Aaa-mf
Share Class	Institutional
Investment Minimum	\$10 million
Ticker	WOTXX
CUSIP	94988A759
Gross Expense Ratio	0.23%
Net Expense Ratio	0.20%
Total fund assets	\$18.9 billion
Fund Manager	Laurie R. White, Jeffrey L. Weaver, CFA, Michael C. Bird, CFA
Fund Inception Date	12-03-90
Class Inception Date	10-31-14
Trading deadline	1 p.m. Eastern Time

Performance	
Current yield as of 12-31-20	
	7-day SEC yield (%)
	0.01
Month	30-day current yield (%)
December 2019	1.46
January 2020	1.42
February 2020	1.41
March 2020	0.91
April 2020	0.25
May 2020	0.09
June 2020	0.05
July 2020	0.05
August 2020	0.01
September 2020	0.01
October 2020	0.01
November 2020	0.01
December 2020	0.01

Average annual total returns (%) as of 12-31-20				
1 year	3 year	5 year	10 year	Since inception
0.36	1.35	0.98	0.49	2.30

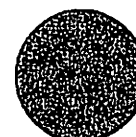
The Manager has contractually committed through May 31, 2021, to waive fees and/or reimburse expenses to the extent necessary to cap the fund's total annual fund operating expenses after fee waivers at the amounts shown above. Brokerage commissions, stamp duty fees, interest, taxes, acquired fund fees and expenses (if any), and extraordinary expenses are excluded from the expense cap. The Manager may also voluntarily waive or reimburse additional fees and expenses, and such voluntary waivers may be discontinued or modified at any time without notice. Without these reductions, the fund's seven-day current yield would have been -0.09%. Prior to or after the commitment expiration date, the cap may be increased or the commitment to maintain the cap may be terminated only with the approval of the Board of Trustees. The expense ratio paid by an investor is the net expense ratio (the total annual fund operating expenses after fee waivers) as stated in the prospectus.

Figures quoted represent past performance, which is no guarantee of future results and do not reflect taxes that a shareholder may pay on an investment in a fund. Investment returns will fluctuate. The fund's yield figures more closely reflect the current earnings of the fund than the total return figures. Current performance may be lower or higher than the performance data quoted and assumes the reinvestment of dividends and capital gains. Current month-end performance is available at the fund's website, wfam.com.

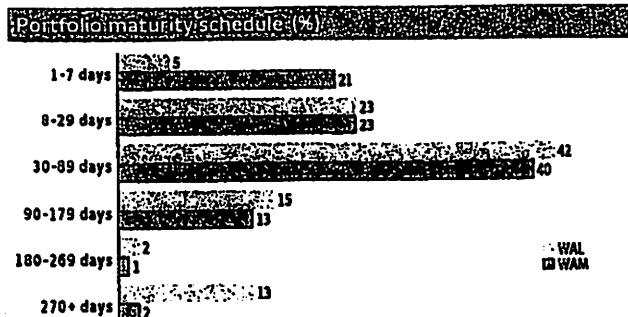
Money market funds are sold without a front-end sales charge or contingent deferred sales charge. Other fees and expenses apply to an investment in the fund and are described in the fund's current prospectus. (Continued on next page.)

Principal investment strategies
Seeks current income exempt from most state and local individual income taxes, while preserving capital and liquidity. Invests in high-quality, short-term money market instruments that consist of U.S. Treasury obligations.

Portfolio composition
% of portfolio
Treasury debt: (100)



Total: 100%



Money market fund statistics
Weighted average maturity: 53 days
Weighted average life: 110 days
Daily liquid assets: 100%
Weekly liquid assets: 100%



Wells Fargo Advisors
MAC H0005-035
One North Jefferson Avenue
St. Louis, MO 63103

January 14, 2021

Westmount Group, Inc.
7604 Plaza Redonda Drive
El Paso, TX 79912-8402

RE: Verification of Assets for Account xxxx-7582

Dear Westmount Group, Inc.:

This letter confirms that:

- (i) You maintain a brokerage account with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), numbered xxxx-7582 ("Account"), established on 07/20/2020;
- (ii) As of 01/13/2021, the Account maintains a total account value in excess of \$700,000.00.

This letter is provided for informational purposes and does not represent future Account value, if your Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within.

Sincerely,

A handwritten signature in cursive script that reads "Denise Gilles".

Denise Gilles
Securities Operations Services Specialist 3
Client Mailings – Verifications & Inquiries

Investment and Insurance Products are:
• Not Insured by the FDIC or Any Federal Government Agency
• Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank Affiliate
• Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested



EXHIBIT “C”

Institutional Class shares

WELLS
FARGO

Asset
Management

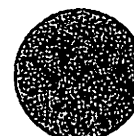
100% Treasury Money Market Fund

All information is as of 12-31-20 unless otherwise indicated. Information is subject to change.

Key facts	
S&P rating	AAAm
Moody's Rating	Aaa-mf
Share Class	Institutional
Investment Minimum	\$10 million
Ticker	WOTXX
CUSIP	94988A759
Gross Expense Ratio	0.23%
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Total fund assets	\$18.9 billion
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Class Inception Date	10-31-14
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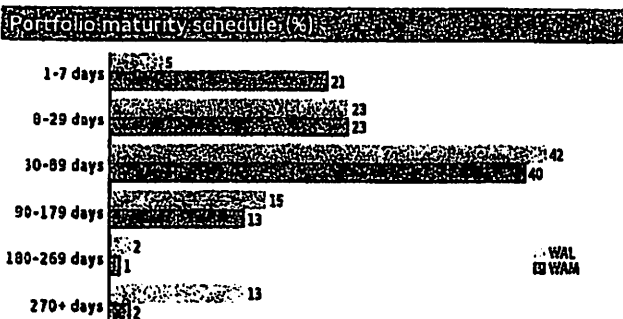
Principal investment strategies
Seeks current income exempt from most state and local individual income taxes, while preserving capital and liquidity. Invests in high-quality, short-term money market instruments that consist of U.S. Treasury obligations.

Portfolio composition
% of portfolio
Treasury debt: (100)



Total: 100%

Performance	
Current yield as of 12-31-20	
	7-day SEC yield (%)
	0.01
Month	30-day current yield (%)
December 2019	1.46
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July 2020	0.05
August 2020	0.01
September 2020	0.01
October 2020	0.01
November 2020	0.01
December 2020	0.01



Average annual total returns (%) as of 12-31-20				
1 year	3 year	5 year	10 year	Since Inception
0.36	1.35	0.98	0.49	2.30

Money market fund statistics
Weighted average maturity: 53 days
Weighted average life: 110 days
Daily liquid assets: 100%
Weekly liquid assets: 100%

The Manager has contractually committed through May 31, 2021, to waive fees and/or reimburse expenses to the extent necessary to cap the fund's total annual fund operating expenses after fee waivers at the amounts shown above. Brokerage commissions, stamp duty fees, interest, taxes, acquired fund fees and expenses (if any), and extraordinary expenses are excluded from the expense cap. The Manager may also voluntarily waive or reimburse additional fees and expenses, and such voluntary waivers may be discontinued or modified at any time without notice. Without these reductions, the fund's seven-day current yield would have been -0.09%. Prior to or after the commitment expiration date, the cap may be increased or the commitment to maintain the cap may be terminated only with the approval of the Board of Trustees. The expense ratio paid by an investor is the net expense ratio (the total annual fund operating expenses after fee waivers) as stated in the prospectus.

Figures quoted represent past performance, which is no guarantee of future results and do not reflect taxes that a shareholder may pay on an investment in a fund. Investment returns will fluctuate. The fund's yield figures more closely reflect the current earnings of the fund than the total return figures. Current performance may be lower or higher than the performance data quoted and assumes the reinvestment of dividends and capital gains. Current month-end performance is available at the fund's website, wfam.com.

Money market funds are sold without a front-end sales charge or contingent deferred sales charge. Other fees and expenses apply to an investment in the fund and are described in the fund's current prospectus. (Continued on next page.)



Advisors

Wells Fargo Advisors
MAC H0005-035
One North Jefferson Avenue
St. Louis, MO 63103

January 14, 2021

Westmount Group, Inc.
7604 Plaza Redonda Drive
El Paso, TX 79912-8402

RE: Verification of Assets for Account xxxx-7882

Dear Westmount Group, Inc.:

This letter confirms that:

- (i) You maintain a brokerage account with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), numbered xxxx-7582 ("Account"), established on 07/20/2020;
- (ii) As of 01/13/2021, the Account maintains a total account value in excess of \$338,000.00.

This letter is provided for informational purposes and does not represent future Account value, if your Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within.

Sincerely,

Denise Gilles

Denise Gilles
Securities Operations Services Specialist 3
Client Mailings – Verifications & Inquiries

Investment and Insurance Products are:
• Not Insured by the FDIC or Any Federal Government Agency
• Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank Affiliate
• Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested



EXHIBIT "D"

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REPORTER'S RECORD COPY

TRIAL COURT CAUSE NO. 2020DCV2997

VOLUME 1 OF 1 VOLUMES

ALBERTO FLORES,)
Plaintiff,)
vs.)
KEYVAN PARSA, M.D. and)
MONTOYA PARK PLACE, INC.,)
Defendants,) IN THE DISTRICT COURT
vs.) OF EL PASO COUNTY, TEXAS
WESTSTAR TITLE, L.L.C.,)
Intervenor/Third-Party) 327TH JUDICIAL DISTRICT
Plaintiff,)
FIDELITY NATIONAL TITLE)
INSURANCE, CO.)

MOTIONS HEARING

The 18th day of May, 2020, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable THOMAS A.
SPIECZNY Judge Presiding, via Zoom in accordance with
the Supreme Court of Texas' Emergency Order Regarding
the COVID-19 State of Disaster, held in El Paso, El Paso
County, Texas:

Proceedings reported by machine shorthand
utilizing computer-assisted realtime transcription.

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DEBORAH JORDAN

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ATTORNEY FOR COUNTER
DEFENDANT/INTERVENOR
FIDELITY

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CHRONOLOGICAL INDEX
VOLUME 1 OF 1 VOLUMES
MOTIONS HEARING

	<u>PAGE</u>	<u>VOL</u>
May 18, 2020		
Announcement of Counsel.....	4	1
Motion by Mr. Miranda.....	7	1
Response by Mr. Kirk.....	11	1
Response by Mr. Brewer.....	12	1
Response by Mr. Willey.....	13	1
Response by Mr. Roman.....	17	1
<u>DEFENDANTS' WITNESSES</u>	<u>Direct</u>	<u>Cross</u>
KEYVAN PARSA	17	21,23
		--
	24	
Court's Ruling.....	30	1
Adjournment.....	41	1
Court Reporter's Certificate.....	42	1

1 THE COURT: I am going to call the case of
2 Albert Flores, plaintiff, versus -- and Fidelity
3 National Title Insurance, intervenor plaintiff, versus
4 Keyvan Parsa, M.D., and Montoya Park Place, Inc.,
5 defendants, and Keyvan Parsa, M.D., and Montoya Park
6 Place, Inc., Albert Flores and Deborah Jordan, as
7 intervenor defendants.

8 Could we have the announcements of all
9 Counsel, please.

10 MR. MIRANDA: Yes, Your Honor. This is
11 Carlos A. Miranda for Keyvan Parsa and Montoya Park
12 Place.

13 MR. KIRK: Good morning, Your Honor.

14 MR. BREWER: Go ahead, Mr. Kirk.

15 MR. KIRK: Go ahead.

16 MR. BREWER: Good morning, Your Honor. Jim
17 Brewer on behalf of WestStar Title, L.L.C.

18 MR. WILLEY: Morning, Your Honor. Michael
19 Willey on behalf of Fidelity National Financial, a
20 subsidiary.

21 MR. KIRK: Morning, Your Honor. Bud Kirk
22 on behalf of Albert Flores.

23 THE COURT: Okay. I -- I recall Richard
24 Roman was in this case representing somebody. Is he --
25 is that still the case?

1 MR. MIRANDA: He was representing Deborah
2 Jordan, but she may not necessarily have a dog in this
3 part of the hunt, so perhaps he decided not to join in.

4 THE COURT: Okay. All right. My -- my
5 recollection of where we were in this case is we had a
6 hearing a while back because there was opposition to
7 going forward with a mediation, and I denied that
8 opposition. The parties went to mediation. It's my
9 understanding that did not result in a settlement of the
10 case.

11 I then signed an order that I thought was
12 an agreed-upon order, and I got a motion by Mr. Miranda
13 to reconsider that order and vacate my ruling. And
14 seeing that this case was not resolved at mediation, we
15 also need to do a scheduling conference.

16 Let me talk about that a little bit first,
17 because the way this would work is we would have to give
18 you a date. And the way things are now, we are looking
19 at the summer of next year. So it would be maybe July
20 or August of 2022. You would then be given a scheduling
21 order and the Court's docket control order, and you --
22 you'd have to essentially create -- use that as a
23 template and create your own scheduling -- you know, put
24 in all of the dates for discovery cutoff and time for
25 filing dispositive motions and things like that.

1 So let's start talking about the order that
2 Mr. Miranda wants me to reconsider.

3 And, Mr. Miranda, it's your motion. I've
4 read it, but let me hear from you first.

5 COURT COORDINATOR: I'm sorry -- I'm sorry
6 to interrupt. Judge, I do have somebody in the waiting
7 room with an iPhone. I believe it may be Mr. Miranda.
8 Can I go ahead and allow him in just to make sure if it
9 is him?

10 THE COURT: Mr. Miranda is already in.

11 COURT COORDINATOR: I'm sorry. Not
12 Mr. Miranda. Mr. Roman.

13 THE COURT: Yes, let's let him in.

14 COURT COORDINATOR: Okay. Just a second.
15 Let me see.

16 MR. MIRANDA: I'll take that as a
17 compliment.

18 COURT COORDINATOR: Yes, it is. There he
19 is.

20 MR. ROMAN: Good morning.

21 COURT COORDINATOR: Sorry about that.
22 Thank you.

23 THE COURT: Mr. Roman, how are you, sir?

24 MR. ROMAN: Just fine, Judge Spieczny. How
25 are you?

1 THE COURT: I am well.

2 Okay. We have two matters we need to
3 address today, one is a scheduling conference hearing
4 but the second is there is a motion filed by Mr. Miranda
5 asking me to reconsider and abate a prior order that was
6 a joint motion, but apparently it was not totally a
7 joint motion. So, Mr. Miranda, I'll hear you first with
8 regard to that motion.

9 MR. MIRANDA: Yes, Your Honor.

10 May it please the Court. Yes, this was not
11 a joint motion in the sense that all the parties agreed
12 to it. It was joint because WestStar and Fidelity filed
13 it jointly. I can fully understand the confusion. I
14 don't think it was intentional. I think it was just the
15 way that the -- the pleading was -- was captioned.

16 And we were taken by surprise because as I
17 was uploading my response and objection on the 26th of
18 April to the -- your order granting the joint motion for
19 interpleader, I -- I received the -- the order. And --
20 and I think I understood, you know, where the Court's --
21 where the Court was coming from. It -- it was simply
22 the title of the --

23 THE COURT: I thought it was a totally
24 agreed-upon order, and I just signed it thinking it was
25 that.

1 MR. MIRANDA: Yeah. And we know you see
2 hundreds if not thousands of these, so, I mean -- and I
3 even told my client, and I spoke with Mr. Brewer and I
4 think that's where it came from. That being said, it
5 was always our intention to object to the motion for the
6 interpleader funds, because, in all honesty, it -- it
7 remains our position that's unnecessary.

8 As the Court is well aware, not only has
9 Mr. Parsa voluntarily entered into an agreed temporary
10 restraining order, we also voluntarily entered into an
11 agreed temporary injunction. And the agreed temporary
12 injunction has maintained the status quo of the funds.

13 Back in January I had discussions with
14 Mr. Brewer and Mr. Kirk, and I provided evidence where
15 the money was. It's in a Wells Fargo account. The
16 money has not been moved since that date. And then as
17 recently as yesterday, May 17th, I provided Mr. Brewer
18 and Mr. Willey an updated copy and a letter from Wells
19 Fargo Bank confirming that the funds are still there.
20 So it was our position -- remains our position that this
21 is really unnecessary.

22 Now, I know that WestStar, Fidelity are
23 taking the position that, number one, they really didn't
24 participate in the agreed temporary injunction and the
25 agreed TRO. My position on that would be, without

1 disclosing communications I had with other lawyers, I
2 did have conversations with -- with WestStar about this.
3 They knew what was going on. And Fidelity has always
4 known what's going on. And the reason that I have
5 Mr. Parsa here is that he would testify that Fidelity
6 has actually made a demand on him prior to the lawsuit
7 even being filed by Mr. Flores, in which WestStar and
8 Fidelity then intervened, that there's an issue about
9 these funds.

10 But the point is, the money hasn't gone
11 anywhere, and the money is not going to go anywhere.
12 And if I'm permitted to call Mr. Parsa to the stand, he
13 will testify that this closing occurred in July of 2020.
14 Mr. Flores' lawsuit wasn't filed until October 2020.
15 The TRO and the injunction were not entered until
16 January of 2021. And at no point during those
17 six months did he do anything wrong with the money. He
18 didn't transfer it. He didn't hide it. He didn't
19 launder it. He didn't send it overseas. He didn't
20 abscond with it to Las Vegas or Rio de Janeiro. The
21 money's always been safe. And since --

22 THE COURT: Let me just interrupt you for a
23 second. I have a vague recollection -- wasn't the money
24 in Mexico for a while?

25 MR. MIRANDA: I -- I can call Mr. Parsa and

1 ask him that. I don't believe, and I've never seen any
2 document where --

3 THE COURT: Okay. Maybe I'm wrong about
4 that. Maybe there was a fear that it would be moved to
5 Mexico.

6 MR. MIRANDA: Yes, there was. And, yes,
7 that's in Mr. Kirk's pleadings that the money may have
8 gone to Mexico, but it -- it never left the country.
9 Money doesn't have a visa, so it's been here in the U.S.
10 the whole time. So that being said, we really believe
11 that this motion was unnecessary.

12 I mean -- and, yes, we had a mediation. I
13 don't -- to be honest, I don't recall opposing to it.
14 We willingly went to the mediation. It got continued
15 because Mr. Parsa --

16 THE COURT: Mr. Roman had -- had an
17 objection and I overruled the objection.

18 MR. MIRANDA: Oh, yeah. Yeah, but that
19 didn't come from Mr. Parsa. We did continue it for a
20 month because of his quarantine for COVID. But we've
21 always tried to do things in good faith, and since I've
22 been involved in the case, I've gone above and beyond to
23 do things in good faith and remain in communication with
24 opposing counsel.

25 So when we were hit with this motion, we

1 were surprised, but we understand. I might have done
2 the same thing if I was on the other side. And when we
3 were hit with the order, we were blindsided, but, you
4 know, we know where that came from, too.

5 So that being said, our position hasn't
6 changed. This isn't really unnecessary [sic], and I can
7 call Mr. Parsa to the stand. And I would be happy to
8 cover these points with him and provide direct testimony
9 as to the fact that the money hasn't gone anywhere and
10 the terms of the temporary injunction have been
11 respected since the moment it was entered by this Court.

12 THE COURT: Let me -- before you call any
13 witnesses, let me just get a brief statement from all of
14 the other counsel as to what their position is.

15 Mr. Kirk, what is your position with regard
16 to Mr. Miranda's motion?

17 MR. KIRK: Well, I've read the letter which
18 Mr. Miranda --

19 THE COURT: Can you speak a little bit
20 louder?

21 MR. KIRK: Yes, Your Honor. I've read the
22 letter which Mr. Miranda circulated showing that -- that
23 there's a balance of over \$700,000 in Wells Fargo Bank.
24 That does not satisfy me. It worries me, because we had
25 two accounts. And I think the total in them was one

1 million three. So what has happened to the other
2 600,000?

3 Also, why is there activity? Why are they
4 funds -- are there funds moving in and out of this
5 account, which is what Mr. Miranda's correspondence
6 shows?

7 MR. PARSA: Can I answer this --

8 THE COURT: I understand you've got some
9 concerns. Okay.

10 MR. PARSA: Can I answer these questions,
11 Your Honor?

12 MR. MIRANDA: Mr. Parsa, hold on --

13 THE COURT: Okay. Mr. Brewer, what is your
14 position?

15 MR. BREWER: Jim Brewer on behalf of
16 WestStar Title, L.L.C. As the Court remembers, this
17 has -- this lawsuit has to do with a closing on a sale
18 of some real estate -- commercial real estate. We are
19 contending that we think by fraud, possibly by mistake,
20 Montoya Park Place, the seller, was overpaid to the tune
21 of over \$700,000. And -- and there was not a lien
22 release that should have been in that closing.

23 The -- the moving to Mexico discussion,
24 that comes from an affidavit -- not just pleadings but
25 an affidavit of Mr. Flores, and it's attached to his

1 petition in this case. The affidavit says, quote --
2 this is Mr. Flores testifying. He told me after
3 WestStar Title Company demanded return of the money to
4 satisfy the lien, that he had moved the money out of
5 Western Heritage Bank and into Mexico. So that's --
6 that's where this concern started.

7 I see Mr. Parsa is here. He may have a
8 different position, but I would argue that the Court
9 does have inherent authority to order deposit of funds
10 into the registry of the Court and that's what we're
11 requesting.

12 THE COURT: Okay. Okay. Mr. Willey.

13 MR. WILLEY: Yes, Your Honor, for Fidelity
14 National Title Insurance Company. I mean, it is our
15 stance that, Your Honor, there's -- we obviously wanted
16 to preserve our -- our right to demand deposit in the
17 registry. And, obviously, the -- the order hasn't been
18 followed to date, even though it's been granted and
19 entered. And we just don't want a waiver of our right
20 to demand deposit into the registry of the Court.

21 Also, as -- I'm sorry -- Mr. Miranda
22 pointed out that, you know, we're -- we weren't a party
23 to the temporary injunction. We were able -- we were
24 not able to, you know, offer our terms in regards to
25 the -- the terms of the actual TRO itself.

1 The argument that Mr. Parsa, you know,
2 hasn't violated or -- or breached is -- is not really a
3 grounds for vacating said order. There's -- there's no
4 real grounds to show that the Court erred in its
5 decision. There's no real irregularity. There's no
6 conduct administered by Mr. Brewer or client -- or my
7 client in this matter. He hasn't shown that they're
8 actually going to be prejudiced by this.

9 And, also, you know, it's important to
10 point out that the temporary injunction that was filed
11 also agreed -- or there was terms in there that
12 indicated that this temporary injunction was going to be
13 filed without prejudice to any separate requests for
14 injunctive relief by WestStar Title itself. So, I mean,
15 I understand the mistake that was made with the joint
16 vice [sic] and agreed order, but it still doesn't --
17 doesn't take away from the order that's been rendered by
18 the Court.

19 And, you know, obviously to date nothing
20 has been followed in regards to Mr. Parsa in that
21 regards either, because he's supposed to register within
22 10 days of the order being executed and entered.

23 Moreover, Mr. Kirk actually did point a
24 good fact in regards to the money actually being moved
25 back and forth. You know, that's obviously a concern of

1 ours, and that's why we requested and filed the motion
2 in the first place, to ensure that those funds are
3 secure within the registry of the Court and are not
4 allowed to be moved in and out of -- you know, at -- at
5 a single person's discretion.

6 I also wanted to point out the fact that
7 the -- the motion that was filed -- I mean, I know -- I
8 know this may not go to substantive, but it needs to be
9 addressed, is that there is a complete
10 mischaracterization of our role and I believe WestStar
11 Title's role in regards to characterizing us as filing
12 this motion to be --

13 MR. MIRANDA: Retributory.

14 MR. WILLEY: Retributory, yeah. Thank you.

15 You know, obviously there's no basis or
16 anything to offer as substance to make any, you know --
17 to make -- you know, substantiate that accusation. And,
18 obviously, that's -- that's not why we requested the
19 monies to be entered into the -- into the registry of
20 the Court. We do it for security and also for -- you
21 know, just to ensure that, you know, all the parties'
22 interest in this matter are addressed.

23 So, you know, I know Mr. Parsa hasn't done
24 anything to date to raise any concerns, but, you know,
25 in -- in fact, if, you know, the -- the relief that we

1 were requesting is not granted, you know, there's no
2 assurances, Your Honor, that, you know --

3 THE COURT: I understand.

4 MR. WILLEY: Yeah. So --

5 THE COURT: He could do something tomorrow.

6 MR. WILLEY: Exactly. And so in that
7 regards, I don't think saying that he hasn't done
8 anything to date is grounds to vacate that order. And I
9 really don't see anything, especially with regards to
10 precedence or -- or any legal theories that would, you
11 know, substantiate an overturning of this -- of the
12 order that was granted, so --

13 THE COURT: Okay. Mr. Miranda, if you wish
14 to put on some testimony, you -- you can go ahead and do
15 that.

16 MR. MIRANDA: Yes, Your Honor. I'd like to
17 call Mr. Keyvan Parsa individually and as the
18 representative of Montoya Park Place to the stand.

19 MR. ROMAN: Your Honor, I'm sorry. Your
20 Honor, I'm sorry. I don't -- I don't mean to interrupt,
21 but Richard Roman here on behalf --

22 THE COURT: Oh, sorry.

23 MR. ROMAN: And may -- may I just weigh in
24 just very quickly?

25 THE COURT: Yes. Please go ahead. I'm

1 sorry I didn't --

2 MR. ROMAN: It might be -- it might be
3 within the Court's recollection that my client is a very
4 minute party in this whole matter. And in so far as
5 there's any liability towards her, we have no position
6 one way or the other -- one way or the other on this.
7 And -- and I'll -- and I'll retract myself from here.

8 THE COURT: Thank you.

9 MR. ROMAN: Thank you.

10 THE COURT: Okay. All right. We're back
11 with --

12 MR. MIRANDA: Yes, I'm calling Mr. Parsa.

13 KEYVAN PARSA,
14 having been first duly sworn by the Court, testified as
15 follows:

16 MR. MIRANDA: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. MIRANDA:

19 Q. Mr. Parsa, will you please state your full name
20 for the record?

21 A. Keyvan Parsa.

22 Q. And what is your current county of residence?

23 A. El Paso, Texas.

24 THE COURT: Could you speak a little
25 louder, please, Doctor?

1 THE WITNESS: El Paso, Texas.

2 THE COURT: Thank you.

3 Q. (BY MR. MIRANDA) And are you familiar with an
4 entity named Montoya Park Place, Inc.?

5 A. Yes, I do [sic].

6 Q. And what is your relationship to Montoya Park
7 Place, Inc.?

8 A. President of this corporation.

9 Q. And are you the sole shareholder of the
10 corporation?

11 A. Yes. Yes, I am.

12 Q. So when I ask you questions, will you be
13 answering on behalf of yourself and Montoya Park Place,
14 Inc., collectively?

15 A. Yes.

16 Q. Okay. All right. Are you familiar with an
17 agreed temporary injunction which my office negotiated
18 with Mr. Kirk in January 20 of '21?

19 A. Yes, I am.

20 Q. Okay. And do you recall what that injunction
21 prohibited you from doing?

22 A. Yes.

23 Q. Can you --

24 A. (Indecipherable.)

25 Q. -- to the best of your recollection what your

1 obligations are under that injunction?

2 A. Not -- not to spend the money, not to transfer
3 the money and just keep the money until we have the
4 solution with the outcome.

5 Q. Okay. And since entering the injunction, is it
6 your opinion that you've complied with its terms?

7 A. One hundred percent.

8 Q. Okay. Is the money -- has the money ever been
9 in Mexico?

10 A. Never. That was actually Mr. Kirk [sic]
11 imagination.

12 Q. When you say --

13 A. (Indecipherable.)

14 Q. -- Mr. Kirk's imagination, can you describe to
15 us what the context of that statement --

16 A. Yes. He came up with this idea that the money
17 is in Mexico, and he has reason to believe that the
18 money is in Mexico. The money never ever left the
19 United States and still was always in the bank with
20 Wells Fargo Bank forever. Never left.

21 Q. And was it ever your intention to transfer the
22 money out of the country?

23 A. Never. Never was my intention. Never.

24 Q. Okay. Now, do you recall giving me a letter
25 yesterday, dated May 17th, from a Wells Fargo Bank

1 representative?

2 A. Yes.

3 Q. And can you explain to the Court what that
4 letter stated?

5 A. Yes. It all -- I had no idea that I have to
6 get the other statement. There are not -- because
7 Mr. Kirk earlier stated that, What happened to the rest
8 of the money? The money is in the bank -- in the Wells
9 Fargo Bank. I just -- it was a short notice for the
10 bank to give me the statement. I have the statement. I
11 can forward it to you that the whole money is there.

12 Q. And so you're willing to share all that
13 information with Mr. Flores and with WestStar and
14 Fidelity?

15 A. As soon as possible. Yes.

16 Q. Okay. Have you transferred any of the money
17 out of the accounts since the injunction was entered?

18 A. Never.

19 Q. Now, you heard some accusations earlier that
20 they were concerned about transfers being made. Do you
21 know what they were referring to?

22 A. I have no idea. This -- I have no idea why
23 they -- why they are thinking that way.

24 Q. So what's the total of the funds remaining in
25 the Wells Fargo accounts?

1 A. Exactly what the -- the 700 and 338 that Mr. --
2 based on that joint temporary TRO that we signed.

3 Q. So approximately over \$1 million?

4 A. That's correct. Yes.

5 Q. And is it your understanding that that amount
6 is sufficient to cover the claims of Fidelity and
7 WestStar?

8 A. Yes.

9 Q. And it would be sufficient to cover the claim
10 of Mr. Albert Flores?

11 A. Of course.

12 Q. Okay.

13 MR. MIRANDA: All right. No further
14 questions, Your Honor. I'll pass the witness for now.

15 THE COURT: Okay. Mr. Kirk, do you have
16 any questions?

17 CROSS-EXAMINATION

18 BY MR. KIRK:

19 Q. Mr. Parsa, aren't -- aren't you aware that
20 there's a demand for about \$786,000 now from WestStar
21 and Fidelity?

22 A. Yes, I'm aware of that. Yes.

23 Q. Are you not aware that there's a demand for
24 interest and attorneys' fees from Mr. Flores?

25 A. Yes, I do. Yes, I understand.

1 Q. So \$1,038,000 is not going to cover all that,
2 is it?

3 A. It will, because I received my portion of the
4 money as well that I did not touch either.

5 Q. What have you done with the rest of the money?

6 A. It's in the bank. I did not spend any -- a
7 penny of it.

8 Q. Why isn't it in one of these two accounts?

9 A. From the beginning, because I just wanted to
10 separate the money that you are claiming and the money
11 that WestStar and Fidelity are claiming. Just -- I
12 didn't want to -- that was part of the agreement of the
13 TRO, if you remember. That's exactly what I did.

14 Q. So you set aside something that you think no
15 one else is asking for?

16 A. No, it's not true. I just wanted to clarify
17 that the funds, they are not getting mixed up. They are
18 all -- they are translucent. If you -- if you refer
19 to -- if you see the document that I provided a couple
20 of months ago, it's clear, but you didn't -- you didn't
21 object at that time, and I don't understand why you're
22 objecting this time.

23 Q. I'm objecting because your attorney has been
24 saying that 700,000 in Wells Fargo takes care of
25 everything.

1 A. No.

2 MR. MIRANDA: Your Honor, I did not say
3 that.

4 MR. KIRK: It's what your letter says,
5 Mr. Miranda.

6 MR. MIRANDA: That was with regards to --
7 wait. I'm not on the stand here.

8 Objection. I did not say that, Your Honor.
9 It's irrelevant.

10 THE COURT: Okay. Let's just go ahead and
11 question the witness.

12 MR. MIRANDA: Yes.

13 MR. KIRK: I have nothing further for the
14 witness, Your Honor. Thank you.

15 THE COURT: Any other Counsel wish to ask
16 this witness any questions?

17 MR. BREWER: Just a couple of questions.

18 CROSS-EXAMINATION

19 BY MR. BREWER:

20 Q. Mr. Parsa, my name is Jim Brewer. I don't know
21 if we've ever met. And I represent WestStar Title.
22 Montoya Park Place sold its commercial real estate in
23 the upper valley; is that right?

24 A. Yes, sir.

25 Q. Does it have any other assets?

1 A. No, sir.

2 Q. And do you understand that you signed an
3 affidavit of no liens on that sale transaction?

4 A. There was bunch of paper that they are -- we
5 signed.

6 Q. Okay. Have you had a chance to look at that
7 affidavit of no liens?

8 A. Well, you know, as I mention it to you, that
9 day we got late to -- to the closing, and there were
10 that bunch of paper we had to sign. And they didn't
11 realize that one of them was the affidavit of --

12 MR. BREWER: Okay. I'll object as
13 nonresponsive, and I have no other questions. Thank
14 you.

15 THE COURT: Any other -- anybody else want
16 to ask any questions?

17 MR. WILLEY: Yes, Your Honor, if you don't
18 mind.

19 THE COURT: Please. You may proceed.

20 CROSS-EXAMINATION

21 BY MR. WILLEY:

22 Q. Mr. Parsa, Michael Willey, Fidelity National
23 Title Insurance Company. With regards to moving this
24 money or granting this money into the registry of the
25 Court, what is -- why would you characterize it -- or

1 why would you say that there's a problem with --

2 A. I never --

3 Q. -- moving it into the registry of the Court?

4 A. You know, actually, that is -- I never said
5 there's a problem. We came up with the agreement a
6 couple of months ago as a TR0, and I respect, as a good
7 citizen, the law of this country. We came up with this
8 TR0 and that's why the money is in Wells Fargo. I did
9 not touch -- did not spend a penny of it.

10 And I do not understand, after the
11 mediation itself, you guys came up with this idea that
12 you want to transfer the money to the Court. I don't
13 understand what you're afraid of.

14 And you mentioned earlier that at any time
15 the money can leave the country. Maybe you would do
16 something like that. I wouldn't do that, because I came
17 up with the agreement as a TR0, and I'm going to respect
18 that TR0. I will never have any intention to play the
19 Court or anything like that. So I don't understand why
20 you came up with this idea that you believe that I might
21 do that after the -- after any time. I didn't really --
22 really follow you.

23 Q. Well, just because you haven't shown anything
24 of wrongdoing doesn't mean that you don't have the
25 ability to commit wrongdoing.

1 A. Everyone's innocent until proven guilty, right.

2 MR. WILLEY: This is civil litigation,
3 Your Honor, not -- not criminal.

4 THE COURT: I understand those
5 distinctions. Okay.

6 MR. WILLEY: No, actually, Your Honor, I
7 just --

8 Q. (BY MR. WILLEY) Real quick as well, though, in
9 the terms of the temporary injunction that you said is
10 signed and that you have been abiding by, it also
11 indicates that without prejudice WestStar Title could
12 ask for further relief in the injunctive relief that
13 you're requesting. So why do you now not -- are not
14 abiding by those terms and allowing WestStar Title and
15 all the other parties, for safety and security, to allow
16 this money to be entered into the registry of the Court?

17 And to also answer your question of what's
18 stopping me, the -- the simple fact that it's going to
19 be registered in the Court. I wouldn't be able to do
20 anything without a Court order. Mr. Brewer wouldn't be
21 able to do anything without a Court order. No parties
22 would be doing -- able to do anything without a Court
23 order. So if you --

24 MR. MIRANDA: Your Honor --

25 MR. WILLEY: -- appreciate it.

1 THE COURT: I -- I -- let me --

2 Mr. Miranda, let me ask you this question --

3 MR. MIRANDA: Yes, Your Honor.

4 THE COURT: Right now this money is in
5 Wells Fargo and in compliance with a TRO or a
6 preliminary injunction?

7 MR. MIRANDA: Yes, Your Honor.

8 THE COURT: Your client is not touching it?

9 MR. MIRANDA: Correct. That's his
10 testimony.

11 THE COURT: Has not touched it, and you're
12 telling the Court he will not touch it.

13 MR. MIRANDA: Correct.

14 THE COURT: And he's telling the Court the
15 same thing.

16 MR. MIRANDA: Yes, Your Honor.

17 THE COURT: So how would you be in any way
18 prejudiced if it was in the registry of the Court
19 instead of in Wells -- Wells Fargo Bank?

20 MR. MIRANDA: It comes down to, I think,
21 what's going on behind the scenes in this litigation. I
22 mean, it is some very contentious litigation, and
23 Mr. Parsa sees this as the way of these parties, for
24 lack of a better word, bullying him. He's doing the
25 best he can to abide by these Courts' orders. He's

1 abided by the Court's orders.

2 We went to mediation. It -- it failed.
3 That doesn't mean this case may still not settle. We're
4 doing things behind the scenes to get to that posture.
5 And -- and more than anything -- you know, the mediation
6 was concluded, I believe, on Friday afternoon, and the
7 motion was filed the following Monday. So, yeah, that
8 was my work. I said retributory. I had to look it up.

9 THE COURT: Okay.

10 MR. MIRANDA: And so that was the tone of
11 the motion. I realize that it's without prejudice to
12 ask for the relief. It doesn't mean the relief has to
13 be granted if there's no evidence. I realize they
14 didn't file a response to my objection. They didn't
15 file a response or objection to my motion to vacate it.

16 I asked this Court for a hearing on its
17 first available setting, which was today. I realize the
18 order said seven days, but we had a feeling that things
19 may have been a little bit different than you thought
20 they were. So we moved as quickly as possible to bring
21 this back to the Court's attention, and that's why we
22 are here today.

23 The point is how are we prejudiced. I
24 think that it goes to the parties' postures in trying to
25 resolve this case. Because if it goes in the registry

1 of the Court, I mean, like we said, we may not be in
2 trial until summer of 2022. We're going to try to get
3 it to resolve -- get this resolved before then, but,
4 again, I think that the parties, the intervenors and the
5 plaintiffs are just trying to exercise leverage on
6 Mr. Parsa to get back what they claim to have mistakenly
7 paid out.

8 And realize, this isn't a dispute over
9 title. We're the -- Mr. Parsa is the owner of the
10 funds. So it's not a title dispute. It's a transfer
11 that they're asking be undone. That's really what it
12 is.

13 MR. PARSA: Can I say something?

14 MR. MIRANDA: Hold on. You don't have to
15 say anything right now, Mr. Parsa.

16 MR. PARSA: I'm sorry?

17 MR. MIRANDA: No. Hold on, Mr. Parsa.

18 Unless -- Your Honor, if you'd like to
19 question Mr. Parsa directly, that's well within your
20 discretion.

21 THE COURT: I -- I don't but it is
22 Dr. Parsa.

23 And, Doctor, I -- here is how I think I
24 should rule, and I want to explain this to you. I do
25 not have a basis for thinking that you're going to move

1 that money, and I do not have any basis to think you're
2 going to do anything devious or that you're going to do
3 anything sneaky or inappropriate. And I take and give
4 full credibility to everything you have said, that you
5 are honoring the injunction and that you intend to
6 continue to honor the injunction.

7 But I do understand the apprehension and
8 the fear of these -- these other lawyers and their
9 clients who don't know you and, you know, their interest
10 in wanting to get just some more security just in case
11 you were to do something with that money.

12 And so I am going to deny the motion to
13 abate that order. I don't know if I need to do another
14 order confirming that. I think the order was originally
15 in place. And I will accept full responsibility for the
16 confusion that has occurred here. You know, this is
17 part of Zoom life. I mean, I think had me or Judge Chew
18 or somebody been sitting in a -- in chambers and a
19 lawyer comes in and says, We've got this joint motion,
20 there would have been a discussion about, Well, is
21 everybody on board? Is there any objection?

22 But, you know, in the Zoom world we're in,
23 when you get a e-mail that there is a joint motion, you
24 just say, Okay; if it's a joint motion, send me an order
25 and I'll sign it. And that's what happened. And I

1 probably should have been more diligent and asked some
2 questions about the joint motion.

3 And I'm not criticizing the lawyers who
4 filed it as a joint motion, because it was joint as to
5 the two of the parties who were filing it. So I
6 didn't -- I was not as attentive to all those details as
7 I should have been. But I think at this stage of the
8 proceedings, what we are going to do is leave the
9 original order to deposit the money in the registry of
10 the Court in place.

11 That order would allow the doctor and
12 Mr. Miranda to ask for access to it at any time. And,
13 you know, you would be free, if there was a need that
14 arose, for -- to come in and say, We need relief from
15 this order, and we'd have a hearing and I'd rule on it
16 at that time. But right now I think the most cautious
17 thing to do is to go ahead and just leave the order in
18 place.

19 I think it did say that there were -- the
20 interpleader had to be done within a certain time. All
21 of those times will run from today. So if he's got,
22 like, 10 days to get it into the registry of the Court,
23 that will start from today.

24 Okay. Let's go ahead and talk about
25 getting a trial setting. And obviously, based on our

1 discussion we've had about where those funds are going
2 to be, I think it is in everybody's interest to get a
3 trial setting as quickly as we can.

4 MR. PARSA: Can I say --

5 THE COURT: Let's let everybody, you know,
6 raise everything and let's try and get this done.

7 MR. PARSA: Can I say something,
8 Your Honor?

9 THE COURT: Well, you do have a lawyer
10 representing you, so --

11 MR. PARSA: But I cannot talk to my
12 attorney --

13 THE COURT: Well, if you want, we can have
14 a short pause, and if you want -- I guess you are not in
15 the same location as your lawyer?

16 MR. PARSA: No.

17 THE COURT: You probably do have cell phone
18 communication, and if you want to take a few minutes and
19 speak with your lawyer, I'm going to give you that
20 opportunity. You can go ahead and communicate with your
21 lawyer and we'll just wait.

22 MR. PARSA: Thank you.

23 THE COURT: Though you might want to mute
24 yourself so we don't hear what you and your lawyer are
25 saying. And when you-all are ready to get back on, get

1 back on. We'll just wait for you.

2 MR. MIRANDA: Thank you, Your Honor.

3 (A break taken.)

4 THE COURT: Before we talk about
5 scheduling, I do need to tell you what Ms. Alarcon
6 impressed upon me. As -- as you all know, there's been
7 over a year with no trials scheduled. We are now
8 beginning to try cases. We have a huge backlog, so when
9 we do slot in a date, it has to be absolutely firm and
10 everybody's got to be ready to go, because we need to do
11 that to begin to address the backlog. If, you know, we
12 set something and then there's continuances and more
13 continuances, we're not going to be able to get our head
14 above water.

15 So, Ms. Alarcon, can you give us potential
16 dates, the -- the earliest ones I think that the Court
17 can be available?

18 COURT COORDINATOR: Yes, Judge. The
19 earliest I have is March -- I'm sorry -- February
20 the 28th for the pretrial and June -- and March 1st for
21 the jury trial.

22 THE COURT: And this is next -- 2022?

23 COURT COORDINATOR: Yes, sir.

24 After that, though, it will not be until
25 June, and my first available is June 6th.

1 MR. KIRK: Has anyone asked for a jury?

2 COURT COORDINATOR: Let me check.

3 THE COURT: You know, that was something
4 else I was going to say, and that is that if you-all
5 want to try this to the Court, we can just do it
6 whenever. I mean, Ms. Alarcon's limitations are because
7 of the demands we have for juries after a year of not
8 having any. But if we want to try this non-jury, we
9 could do it probably much quicker.

10 MR. ROMAN: Has there been a jury fee paid
11 by anybody?

12 THE COURT: I have no idea.

13 COURT COORDINATOR: I'm checking.

14 No, sir.

15 THE COURT: Okay. Well, let's try -- try a
16 different tack [sic]. How long would it take you-all to
17 get this case ready to try on a non-jury basis?

18 MR. MIRANDA: Your Honor, this is Carlos
19 Miranda. We haven't started discovery. Mr. Kirk just
20 served discovery last week on behalf of Mr. Flores, but
21 there will probably be discovery depositions. So we
22 would probably need at least 120 days of discovery.
23 That's being optimistic.

24 THE COURT: Sure. Well, we could do that
25 and still give you a date this calendar year.

1 MR. MIRANDA: Correct. Yes.

2 THE COURT: Does everybody sort of agree
3 that we could, you know, do a non-jury trial in November
4 or something around that time frame?

5 MR. WILLEY: Well, Your Honor, Fidelity
6 National Title Insurance Company doesn't have any
7 objections to that.

8 MR. BREWER: Same with WestStar Title.
9 We'd be fine with the non-jury. And -- and
10 Mr. Miranda's time frame sounds about right.

11 MR. ROMAN: On behalf of Deborah Jordan,
12 Your Honor -- Judge Spieczny, we've got no objections.
13 It's -- it's a documents case. The testimony is not
14 going to change what's in the documents, so we have no
15 objections.

16 THE COURT: It sounds like there's going to
17 be not more than a few depositions and a lot of
18 documents, so --

19 COURT COORDINATOR: How many days are we
20 looking at, Judge?

21 THE COURT: Ms. Alarcon, what's -- pardon?

22 COURT COORDINATOR: How many days are we
23 looking at?

24 THE COURT: I think for non-jury maybe two
25 to three. I mean, at most I would think a three-day

1 trial. Does everybody agree with that?

2 MR. BREWER: Agreed.

3 MR. MIRANDA: Agreed.

4 MR. WILLEY: Yes, Your Honor. I don't see
5 it more than three.

6 COURT COORDINATOR: Three whole days?

7 I do have October the 19th, to begin the
8 19th, and continue until the 21st available.

9 THE COURT: Everybody good with
10 October 19th?

11 MR. MIRANDA: Yes, Your Honor.

12 THE COURT: That's roughly five months from
13 now, so -- actually, it's almost exactly five months
14 from now. All right. Well, let's just set this for a
15 non-jury trial on October 19th. Let me write that down.

16 COURT COORDINATOR: Beginning at 10:00.
17 Yes, Judge?

18 THE COURT: That's fine.

19 COURT COORDINATOR: Okay.

20 THE COURT: Is everybody here -- we've got
21 some out-of-town folks. Would you be flying in that
22 day? Does anybody need to start a little bit later?

23 MR. WILLEY: If it's going to be in person,
24 Your Honor, yeah, we -- we're fine with that.

25 COURT COORDINATOR: That was my other

1 question, Judge. Will this be via Zoom or in person?

2 THE COURT: My preference would be in
3 person. I have had both vaccines. I would feel
4 comfortable. I think we would still do some social
5 distancing. We may have some use of masks, but I'm not
6 going to impose that on anybody.

7 What I think we should do is wait until
8 maybe September to make that decision. If more and more
9 people are getting vaccinated and it looks -- and
10 everybody is comfortable doing it safely, I would be
11 fine doing it in person. But if people are
12 uncomfortable with that and really want to do it by
13 Zoom, or if people are appearing from out of town and
14 want to do that by Zoom, I think we could allow that,
15 also.

16 So when would we normally do a pretrial?
17 Like three or four weeks before?

18 COURT COORDINATOR: Normally, Judge -- I
19 mean, I don't know -- I'm sure that, you know, if you
20 want to do it a little different -- we usually don't
21 have a pretrial before, but maybe because -- since this
22 is a three-day bench trial, I don't know if that's what
23 you want to do. We can set it and by then we should
24 know.

25 I was just going to check with the Judge

1 just because of OCA. I'm not sure as far as -- I know
2 that right now they have strict guidelines as far as
3 having in-person hearings, but I don't know if she feels
4 like maybe October will be okay.

5 THE COURT: Okay. Well, the -- the Office
6 of Court Administration does have some guidelines. The
7 Texas Supreme Court has some guidelines. Our Council of
8 Judges has some guidelines. If based on any of those
9 guidelines we cannot go forward, we cannot go forward.
10 But I think we can, and I think certainly by October we
11 can.

12 And, you know, if the world changes and all
13 of a sudden there's another wave and the pandemic gets
14 worse, we'll have to reconsider it. But I think for
15 right now let's schedule it for October 19th, and let's
16 have a pretrial one month before, sometime in, you know,
17 late September. And at the pretrial, if there's any
18 questions about COVID and how safe it is, we'll
19 entertain those at that time.

20 COURT COORDINATOR: So, Judge, do you mind
21 if I do it September 21st?

22 THE COURT: No. That sounds okay to me.

23 COURT COORDINATOR: At 10:00.

24 THE COURT: Okay.

25 COURT COORDINATOR: And then what I can do

1 is, I can still provide you with a Zoom link for that
2 particular day, and then if, of course, anything
3 changes, then we just don't need the Zoom information.

4 THE COURT: For right now double book. I
5 mean, everything we're doing right now, keep Zoom links.
6 But I think we hopefully will reach the point where we
7 can do some of this stuff in person.

8 COURT COORDINATOR: Okay. Okay, Judge.

9 THE COURT: Okay.

10 COURT COORDINATOR: I'll send out the
11 notice.

12 THE COURT: Ms. Alarcon, is there anything
13 else you need from anybody in terms of getting
14 everything we need to do in terms of scheduling?

15 COURT COORDINATOR: No, sir. Just if they
16 have any pleadings that need to be reviewed by you, if
17 they can just either e-mail them to me or -- I don't
18 know if you want them to e-mail them to you directly and
19 just copy everyone or they --

20 THE COURT: I think file everything with
21 the Court.

22 COURT COORDINATOR: Okay.

23 THE COURT: Then if there's motions for
24 summary judgment or motions -- whatever motions there
25 are, Ms. Alarcon will schedule, and she'll be in charge

1 of setting -- getting ahold of me and setting a hearing.

2 MR. MIRANDA: Thank you, Your Honor.

3 THE COURT: Okay. Thank you. And, you
4 know, if you -- the fact that we're scheduling this for
5 trial does not mean you cannot settle it among
6 yourselves if you wish to. So, you know, good luck with
7 whatever you-all do. Everybody stay safe.

8 COURT COORDINATOR: I'm sorry, Judge. Just
9 one more thing. Are you going to be signing another
10 order or is the order that you already signed in place?

11 THE COURT: Does everybody understand the
12 order that I announced today?

13 MR. MIRANDA: Yes, Your Honor. I think we
14 can interpret it as the deal is what the deal is plus
15 10 days from today.

16 THE COURT: Yes. There is 10 days to --
17 starting today to comply with what the prior order was,
18 so I don't think I need a new order.

19 COURT COORDINATOR: Okay. And then you're
20 not going to order them to mediation, correct?

21 THE COURT: Not at this time. They went a
22 little while ago. If -- as we're going down the road,
23 if you-all think that would be helpful and you need me
24 to order the mediation, you know, raise that and file a
25 motion asking for it, but as of now I'm not going to

1 make that order again.

2 Okay. Thank you, and we will be
3 dismissed -- you-all are dismissed.

4 (Proceedings concluded.)
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1 STATE OF TEXAS)

2 COUNTY OF EL PASO)

3

4 I, Maria I. Stallings, Official Court Reporter in
5 and for the 327th District Court of El Paso County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$70.00 and was
18 paid by Mr. James Brewer, Esq.

19 WITNESS MY OFFICIAL HAND this the 2nd day of
20 June, 2021.

21

22 /s/ Maria I. Stallings
23 MARIA I. STALLINGS, Texas CSR# 8229
24 Official Court Reporter
25 327th District Court
500 E. San Antonio, Rm. 606
El Paso, TX 79901
(915) 546-2032
Expires May 31, 2023

EXHIBIT “E”

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REPORTER'S RECORD

COPY

TRIAL COURT CAUSE NO. 2020DCV2997

VOLUME 1 OF 1 VOLUMES

ALBERTO FLORES,)	
Plaintiff,)	
vs.)	
KEYVAN PARSA, M.D. and)	
MONTOYA PARK PLACE, INC.,)	
Defendants,)	IN THE DISTRICT COURT
vs.)	OF EL PASO COUNTY, TEXAS
WESTSTAR TITLE, L.L.C.,)	327TH JUDICIAL DISTRICT
Intervenor/Third-Party)	
Plaintiff,)	
Fidelity National Title)	
Insurance, CO.)	

MOTIONS HEARING

The 8th day of June, 2021, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable THOMAS A.
SPIECZNY Judge Presiding, via Zoom in accordance with
the Supreme Court of Texas' Emergency Order Regarding
the COVID-19 State of Disaster, held in El Paso, El Paso
County, Texas:

Proceedings reported by machine shorthand
utilizing computer-assisted realtime transcription.

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CHRONOLOGICAL INDEX
VOLUME 1 OF 1 VOLUMES
MOTIONS HEARING

	<u>PAGE</u>	<u>VOL</u>
June 8, 2021		
Announcement of Counsel.....	4	1
Motion by Mr. Brown.....	5	1
Response by Mr. Kirk.....	12	1
Response by Mr. Brewer.....	13	1
Response by Ms. Kelley.....	15	1
<u>DEFENDANTS' WITNESSES</u>	<u>Direct</u>	<u>Cross</u>
KEYVAN PARSA	18,50	22,27
		31,53
Motion by Mr. Brown.....	37	1
Response by Mr. Kirk.....	40	1
Response by Mr. Brewer.....	40	1
Response by Ms. Kelley.....	41	1
Response to Question by Ms. Kelley.....	43	1
Response to Question by Mr. Brewer.....	44	1
Response to Question by Mr. Kirk.....	45	1
Court's Ruling.....	55	1
Adjournment.....	57	1
Court Reporter's Certificate.....	58	1

1 THE COURT: I will call the case of Albert
2 Flores versus Keyvan Parsa, M.D., and Montoya Park
3 Place, Inc., defendants, and WestStar Title and Fidelity
4 National Title Insurance as intervenors/third-party
5 plaintiffs versus Mr. -- Dr. Parsa, Montoya Park Place,
6 Albert Flores and Deborah Jordan, third-party
7 defendants, Cause Number 2020DCV2997.

8 Could we have the announcements, please?

9 MS. KELLEY: Shakira Ali Kelley,
10 K-E-L-L-E-Y, on behalf of Fidelity National Title
11 Insurance Company, Your Honor.

12 MR. BREWER: Good afternoon, Your Honor.
13 Jim Brewer on behalf of WestStar Title, L.L.C.

14 MR. KIRK: Bud Kirk on behalf of Albert
15 Flores.

16 MR. BROWN: And Troy Brown, Your Honor, on
17 behalf of defendants, Dr. Keyvan Parsa and Montoya Park
18 Place, Inc.

19 THE COURT: Okay. I believe we've got two
20 different motions pending today. There was a motion
21 filed by Mr. Brown to reconsider the earlier order to
22 deposit funds into the registry of the Court, and there
23 is a motion also to have a motion for contempt. So I
24 think we'll go ahead --

25 Mr. Brown, I'll hear your motion first.

1 MR. BROWN: Okay.

2 THE COURT: You may proceed.

3 MR. BROWN: Thank you, Your Honor.

4 The Court is correct. We filed a -- a
5 second motion for reconsideration since I came into this
6 case substituting in for Carlos Miranda. And this was
7 filed on May 28th, 2021.

8 At -- at that time, to my understanding,
9 the Court had entered an order on -- on May 8th -- 18th,
10 requiring these defendants to deposit certain monies
11 into the registry of the Court. And for purposes of
12 this hearing, what I'll do is call them the deposited
13 funds, because that's how they were denominated in
14 WestStar and Fidelity's original joint motion for
15 interpleader.

16 The -- the joint motion spoke in terms of
17 interpleader, and so on May 28th I filed a motion for
18 reconsideration really addressing the elements of an
19 interpleader and a proper interpleader action and it
20 doesn't fit here.

21 And -- and then in -- in WestStar's
22 response to the motion for reconsideration, what it
23 appeared they were really asking was simply that monies
24 be deposited into the registry of the Court, which --

25 THE COURT: In their response, you're

1 referring to the motion for contempt?

2 MR. BROWN: No, I'm not -- the -- the
3 motion for contempt came after that, I believe.

4 THE COURT: Okay. I'm not sure I've seen
5 that response, but -- but go ahead and continue.

6 MR. BROWN: Okay. Well, to -- in a
7 nutshell, Judge, what -- what WestStar argued in their
8 response was, Well, Rule 43 or 143, whatever the Rule
9 is, doesn't -- doesn't apply here because it's just a
10 standard related to deposit of monies into the registry
11 of the Court, and they cited some case law. That case
12 law says, essentially, that unless there is evidence
13 that the monies at issue, what I'll call the deposited
14 funds here -- unless there's evidence that those monies
15 are in danger of being lost or depleted, it's not
16 appropriate. In fact, it's an abuse of discretion to
17 order the monies be placed in the registry of the Court.

18 And -- and what you had here, if we go
19 back -- and what I've -- what I've also done, Judge --
20 and I -- I sent it probably a little over an hour or so
21 before the hearing to you at your e-mail address. It
22 took me a while to -- to find your e-mail address, but
23 in any event, at the hearing --

24 THE COURT: What e-mail address did you
25 send something to?

1 MR. BROWN: Let me -- let me see.

2 Tomspieczny@yahoo.com.

3 THE COURT: Okay. You sent that an hour
4 ago?

5 MR. BROWN: About 1:15, Judge, so not quite
6 an hour. But what I -- I sent are copies of our
7 pleadings and then the most recent pleading, which we
8 filed today, which was a reply to the response.

9 But if you look at the -- the hearing
10 transcript, which I didn't have at the time I filed the
11 motion for reconsideration, during that hearing, it --
12 it appeared to me that all Counsel were really of the
13 opinion that the -- the monies at issue had not been
14 transferred or moved or there's no mutations of that
15 money, not only since the temporary injunction was --
16 was agreed and put in place but as far back as July 20th
17 of 2020.

18 In fact, attached to -- to the original
19 joint motion was an Exhibit B, and that Exhibit B had
20 two letters from Wells Fargo Bank identifying that the
21 sums of 700,000 and 338,000, which are the -- the funds
22 at issue, the deposited funds -- that those funds
23 remained under deposit as of at least January 14th,
24 2021, with Wells Fargo Bank. And that was before the
25 temporary injunction was -- was consented to and signed

1 by this Court and then before it was filed of record on
2 January 27th, 2021.

3 At the hearing Dr. Parsa testified that any
4 claim that the monies -- and this came in an affidavit
5 attached to Albert Flores's petitions -- any claim that
6 the monies were ever transferred to Mexico was -- was
7 not true. And, in fact, if we look at those same
8 letters that are attached as Exhibit B to -- to the
9 joint motion, they indicate that the funds were
10 originally deposited on July 20th of 2020. That's well
11 in advance of the -- of the lawsuit being filed in
12 September of 2020; obviously well in advance of the
13 temporary injunction.

14 Dr. Parsa continued to testify that the --
15 the -- the monies remained on account in the sum of
16 \$1,038,000 as of the hearing on May 18th, 2021. Mr. --
17 I think his name was Willey, who was at that point
18 Fidelity's counsel, said on the record -- and I've
19 included these -- these passages from the transcript in
20 both the response to the motion for contempt and in our
21 reply to the -- the responses to our motion for
22 reconsideration. Mr. Willey said on the record, Even
23 though we don't have any basis to believe that
24 these mon- -- that anything has happened with these
25 monies to date, meaning at least as of May 18th, 2021,

1 nevertheless it could happen tomorrow. Well, that's --
2 that's not the standard.

3 The standard is -- is whether the -- the
4 monies are in danger of being lost or depleted. And
5 based on the evidence that was attached to the joint
6 motion, Mr. -- or excuse me -- Dr. Parsa's testimony at
7 the hearing, there was no evidence, and Your Honor
8 actually agreed with that, in explaining the ruling at
9 that time to Dr. Parsa that -- that Your Honor agreed
10 that he was credible in his statements and -- and in
11 view of the -- the documentary evidence that had been
12 provided at that time, that there was no concern that
13 there was going to be any kind of improper activity.
14 And, of course, there hadn't been any transfer of any
15 monies at that time.

16 I would like to call Dr. Parsa just briefly
17 in a moment, but to -- to continue on, the -- the
18 responses to our motion for reconsideration, both by the
19 plaintiff and by WestStar, don't provide any new
20 evidence that's not already been before the Court that
21 there's any danger of the monies being lost or depleted.

22 In fact, Albert Flores, in his response,
23 says, Well, at some point -- and he's just reiterating
24 what he said attached to his petition, which hasn't been
25 substantiated, which is, Well, he -- Dr. Parsa told me

1 the monies had been transferred to Mexico. Well,
2 there's no reason to believe that occurred based on all
3 the deposit information we have that's been before the
4 Court, which was that on July 20th the monies were, in
5 fact, in the Wells Fargo account.

6 The only place they had been before that
7 was the West- -- was the Western Heritage account, and
8 the monies remained on deposit since then. So there's
9 no -- there's -- there's simply no credibility to any
10 kind of, I guess, speculation that the monies went to
11 Mexico.

12 And -- and then WestStar says, Well,
13 there's evidence that it's in the name at this time --
14 although remaining in the Wells Fargo accounts, it's in
15 the name of Westmount Group, Inc., and -- and in -- and,
16 in fact, that is also contained within the Exhibit B to
17 their original joint motion. So putting aside for the
18 moment that the monies are in accounts in the name of
19 Westmount Group, Inc., and not -- and not Dr. Parsa or
20 Montoya Park Place, Inc. -- putting that aside for the
21 moment, those same letters show the monies were on
22 deposit on -- on July 20th, 2020, and that hasn't
23 changed.

24 And so any allegation in -- in any of these
25 motions that somehow the monies have been moved around

1 or been -- have been gone -- undergone any mutations is
2 simply -- simply incorrect. And I --

3 THE COURT: Let me just ask you about those
4 dates. The -- you said there is documentation
5 confirming that the money was in the bank, untouched,
6 July 20th, 2020?

7 MR. BROWN: That's right.

8 THE COURT: So that's just about a year
9 ago.

10 MR. BROWN: Right.

11 THE COURT: Okay. What is the current
12 status of -- is there something showing where they are
13 today or very recently?

14 MR. BROWN: Well, I'd like to -- to put --
15 to put Dr. Parsa on the stand just briefly to talk about
16 that, but his testimony at the last hearing was -- and
17 there was mention by Attorney Miranda that there had
18 been a -- a letter circulated among the parties showing
19 that the monies were on account on -- at Wells Fargo as
20 of May 18th, 2021.

21 THE COURT: Okay. Let me -- you'll --
22 you'll have a right to put him on, but let me hear
23 briefly from each of the other lawyers before we start
24 hearing evidence.

25 Mr. Kirk, do you want to go next?

1 MR. KIRK: Yes. Thank you, Your Honor.

2 If the Court bases its ruling to deposit
3 funds into the registry on the risk, danger of
4 depletion, we have evidence now that there is danger of
5 depletion. We've learned that instead of these funds
6 being in unfettered accounts, one of the accounts is put
7 up as collateral for a loan that Dr. Parsa used to buy
8 some equipment for his practice, and the other account
9 has a -- an early withdrawal penalty -- a substantial
10 \$60,000 early withdrawal penalty.

11 So there is danger of depletion. There is
12 danger of depletion if there's a default on whatever the
13 loan obligation is. There's also danger of depletion if
14 Dr. Parsa doesn't put up other funds instead of these
15 restricted funds, these funds that are at risk of
16 depletion. And Dr. Parsa --

17 THE REPORTER: Mr. Kirk, I'm sorry. There
18 was interference. Can you repeat?

19 MR. KIRK: Thank you.

20 Dr. Parsa took away from the closing
21 1,829,000, a few days later, at Mr. Flores' request,
22 paid Mr. Flores what he said he had to have right away
23 and that was 280,000. So Dr. Parsa has almost a million
24 six. And what funds did he point us to as security not
25 to worry? It was funds that he'd already tied up at the

1 time, put at risk of depletion at the time and not told
2 anybody about that.

3 THE COURT: Let -- let me ask you a
4 question. You mentioned an early withdrawal penalty.
5 If I were to order that these funds be put into the
6 registry of the Court, would that penalty be invoked and
7 the bank would impose that penalty?

8 MR. KIRK: All we have is Dr. Parsa's word
9 for that, and I don't know why he couldn't use some
10 other part of the million six to put this money into the
11 Court. Why is he saying, you know, The security that I
12 have for these gentlemen is these funds, funds that he's
13 already not able to reach himself?

14 THE COURT: Yeah. He -- they're
15 encumbered.

16 MR. KIRK: Because of the early withdrawal
17 penalty and because of the encumbrance. One account is
18 put up as collateral for the loan.

19 THE COURT: Okay. Mr. Brewer, could I hear
20 from you next?

21 MR. BREWER: Sure. Jim Brewer on behalf of
22 WestStar Title. Just very briefly, I'll start with the
23 obvious. We've already had a hearing on this back in
24 May, an evidentiary hearing in which the Court ruled. I
25 think -- I don't think it's right for a party to simply

1 go out and get new counsel and try again. I don't think
2 that's appropriate, and I don't think that sets a good
3 precedent. That's the -- that's the obvious thing.

4 Secondly, I do think that the Court's order
5 was correct, and I think it should stand. The -- we are
6 talking about a specific fund of money that is -- that
7 are sale proceeds from a sale by a Montoya Park Place,
8 L.L.C. That entity is -- has two different
9 stakeholders, I guess, or -- or principals, Mr. Flores
10 and Mr. Parsa, and they are at odds.

11 Mr. Parsa has taken the money himself and
12 has moved them at least twice, once to Western Heritage
13 Bank and the second time to Wells Fargo Bank. The Wells
14 Fargo Bank account, as has been discussed, is in the
15 name of a different entity, not a party to this lawsuit,
16 Westmount Group, Inc. I don't know why that is. I
17 don't know why Montoya Park Place, L.L.C., is not
18 holding the sale proceeds. And -- and those proceeds
19 have been pledged.

20 Mr. Parsa testified at the last hearing
21 that Montoya Park Place has no other assets, and -- and
22 we have allegations, at least, of money going into
23 Mexico. I think taking the -- taking the sum of all
24 these different factors, there is sufficient at least
25 concern or danger that these funds could be lost if

1 they're not placed in the registry of the Court. And I
2 think that Mr. Parsa's refusal to comply since April is
3 further evidence of that.

4 That's -- that's -- that's what I have to
5 say. Thank you.

6 THE COURT: Ms. Kelley.

7 MS. KELLEY: Your Honor, good afternoon.
8 Shakira Kelley on behalf of Fidelity.

9 Mr. Brown is correct. I was not counsel
10 for Fidelity at the last hearing, but I have
11 supplemented the Court transcript as Exhibit B to my
12 motion, which holds the testimony.

13 And to echo what Mr. Brewer just said,
14 there has -- we have -- there was an evidentiary motion,
15 which was actually a reconsideration as well. The
16 initial deadline for the Court funds was May 6th, which
17 was then extended to -- to May 28th for the deposit in
18 the Court registry. I filed my motion on June 7th.
19 Today is July 8th.

20 From those dates there has been no
21 compliance or attempt to at least deposit any of the
22 funds, any half of it, any quarter of it. At any point
23 they could -- if they were to move for
24 reconsideration -- and I do -- I do agree, I don't
25 believe there's anything new pledged in this motion, but

1 if there is anything new, they still could have complied
2 with the Court order.

3 And I know I'm going into my motion, but
4 essentially this is my response for the motion for
5 reconsideration as well. Reviewing the transcript,
6 Your Honor, Mr. Brown reiterates about the funds being
7 held in the Wells Fargo account. The Court questioned
8 counsel for Mr. Parsa how they would be prejudiced if
9 they would just transfer it into the Court registry and
10 for the funds to remain there instead of the Wells Fargo
11 account. At no point there was there any evidentiary
12 information given of a pre-penalty depository fee or
13 anything like that.

14 And as we state today, we don't actually
15 know where the funds are to -- from recent amounts. We
16 do know that I -- Mr. Miranda, counsel for Mr. Parsa, is
17 no longer counsel, and the due date for these funds to
18 be deposited, May 28th, was the date of the appearance
19 of the new counsel. So those actions by itself allude
20 to a voluntary disobedience of the previous Court order,
21 when, again, we've already had a testimony hearing.
22 There has been no -- there is no Rules of Civil
23 Procedure which will allow a -- an additional
24 reconsideration without applying by the following Court
25 order.

1 And I do want to echo what -- what Mr. Kirk
2 said as well, or I believe Mr. Brewer. We do have a --
3 the concern remains. These funds, as we last know of
4 them, were in a account with a different entity that is
5 not related to this party at all, and there is still
6 sufficient funds that would have covered the demands
7 between these parties and there would be additional to
8 account for on top of that.

9 So there -- there has been new -- no new
10 evidence that would show that these funds don't --
11 should be in the Court regis- -- shouldn't be in the
12 Court registry. There's been no new evidence offered.
13 And, more so, if anything, I believe that almost six --
14 two-month delay to abide by the following Court order
15 shows more reason for harm.

16 There's a reason why they don't want to
17 deposit these funds into the Court registry and abide by
18 Court orders. You don't see Court orders on such a
19 large amount as being disobeyed unless the money is not
20 there. I mean, that is the natural conclusion that we
21 are going to be concerned about, because why not just --
22 why not just comply with the Court order.

23 THE COURT: Okay. I think I understand
24 everybody's position.

25 Mr. Brown, I will allow you to put on your

1 witness.

2 Doctor, would you raise your right hand,
3 please?

4 KEYVAN PARSA,
5 having been first duly sworn by the Court, testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. BROWN:

9 Q. Dr. Parsa, can you please state your full name?

10 A. Keyvan Parsa.

11 Q. Doctor, you remember when you were here back on
12 May 18th of this year and you testified on -- on the
13 original motion that the defendants, Fidelity and
14 WestStar, had filed for interpleader. Do you remember
15 that?

16 A. Yes.

17 Q. And at that time I believe that you testified
18 that the monies at issue, the \$700,000 and the \$338,000,
19 remained on deposit at Wells Fargo; is that correct?

20 A. Yes.

21 Q. As of today, July 8th, 2021, do those monies
22 still remain on deposit in those same accounts?

23 A. Yes, sir.

24 Q. When were the monies originally deposited into
25 those accounts?

1 A. July 2020.

2 Q. And --

3 A. July -- July 20th, 2020.

4 Q. Now, after that but before the lawsuit, were
5 the monies used as collateral for a credit line?

6 A. Yes.

7 Q. When did that take place after July 20th of
8 2020?

9 A. August 2020.

10 Q. And that was in the name of what account
11 holder?

12 A. Westmount Group.

13 THE COURT: Can you speak a little louder,
14 please?

15 THE WITNESS: Yes.

16 Westmount Group.

17 Q. (BY MR. BROWN) And is the correct name of that
18 entity Westmount Group, Inc.?

19 A. Yes.

20 Q. How are you affiliated with that entity?

21 A. I'm the president.

22 Q. All right. There's an Exhibit B that was
23 attached to the joint motion for interpleader. You've
24 had an opportunity to review that in preparation for
25 today?

1 A. Yes.

2 Q. There were a couple letters that were attached
3 that identified accounts in the name of Westmount Group,
4 Inc., which back in January of 2021 had the respective
5 sums of 700,000 and -- and 338,000 in them; is that
6 correct?

7 A. That is correct.

8 Q. Now, are those the same accounts and the same
9 funds that were deposited back in July of -- of '20?

10 A. Identical, yes.

11 Q. And so, to my understanding, a temporary
12 injunction was issued and entered into in this case in
13 the latter part of January of 2021; is that correct?

14 A. Yes.

15 Q. So since that date has there been any change in
16 where these monies are deposited and in -- in what name?

17 A. No.

18 Q. If -- if the monies were to be removed at this
19 point, are there any consequences that would flow --
20 monetary consequences that would flow from doing that?

21 A. Yes.

22 Q. What are those?

23 A. At least the 4.5 penalty plus other fees, and,
24 also, there are tax -- tax consequences, and most
25 importantly, it's pledged to the loan, so it virtually

1 is illegal for me to take the funds and send it to the
2 registry of the Court.

3 Q. Now, you said 4.5 penalty. Is it a
4 4.5 percent --

5 A. Percent penalty. Yes.

6 Q. Calculated on the sum of \$1,038,000?

7 A. At least, yes.

8 Q. And you said there were other penalties or fees
9 that would be incurred?

10 A. Yes.

11 Q. And would the -- you said it was -- it would be
12 illegal to -- since the monies have been pledged as
13 collateral, to -- to remove the funds from the accounts.
14 Are you saying that in your -- to your understanding
15 that would be a breach of the contract where -- whereby
16 the funds were -- the monies were pledged?

17 A. Yes, that is correct.

18 MS. KELLEY: Objection, legal conclusion.

19 THE COURT: I'll -- I'll overrule it.

20 You may continue.

21 MR. BROWN: I'll pass the witness,

22 Your Honor.

23 THE COURT: Okay. Let's keep the same
24 order.

25 Mr. Kirk, do you want to question this

1 witness?

2 MR. KIRK: Yes, Your Honor. Thank you.

3 CROSS-EXAMINATION

4 BY MR. KIRK:

5 Q. Dr. Parsa, why did you not tell Albert Flores
6 about the deposits into the Wells Fargo accounts?

7 THE WITNESS: Do I need to answer the
8 question?

9 MR. BROWN: You need to.

10 THE WITNESS: I'm sorry?

11 MR. BROWN: You need to answer that.

12 THE WITNESS: Would you -- would you repeat
13 one more time your question, sir?

14 Q. (BY MR. KIRK) Yes. Why did you not tell
15 Albert Flores about the deposits into the Wells Fargo
16 accounts?

17 MR. BROWN: Judge, I would object that that
18 assumes facts not in evidence at this point, as
19 Mr. Flores has never testified in this hearing.

20 THE COURT: I'll overrule the objection.
21 You can go ahead and answer.

22 THE WITNESS: I should answer?

23 MR. BROWN: Yes.

24 THE COURT: Yes.

25 THE WITNESS: Well, you know, if you look

1 at the document, at that time Mr. Flores had no position
2 in the corporation and I had no obligation to give him
3 any report. He resigned July 1st, 2020. Why should I
4 give him any report of what I'm doing?

5 Q. (BY MR. KIRK) Why did you keep promising him
6 he'll get his money?

7 MR. BROWN: Judge, I would -- I would argue
8 that that doesn't have anything to do with the motion
9 we're here on. It's irrelevant.

10 THE COURT: I'll overrule that.

11 You -- you can answer that.

12 THE WITNESS: What was the question?

13 MR. BROWN: Can you repeat the question,
14 Mr. Kirk?

15 Q. (BY MR. KIRK) Why did you keep promising
16 Mr. Flores --

17 A. I did not promise anything to Mr. Flores.
18 You've been misinformed, Mr. Kirk.

19 Q. Why did you ask Mr. Flores the day after the
20 closing how much money he needed right away?

21 A. That wasn't the -- the question after the
22 hearing. Prior that, Mr. Kirk, me and your client, that
23 obviously he doesn't disclose all the details to you, we
24 had the agreement -- we came up with the conclusion that
25 how much money he's supposed to receive and that was

1 \$280,000, that he received couple of days after I got
2 the money.

3 And 1st of July -- as of 1st of July 2020,
4 he resigned of the position with the corporation, and I
5 had no obligation to give him any information, as the
6 document shows and you have it and you know it, by the
7 way. And I don't understand why you're pretending that
8 you don't know anything.

9 Q. May I remind you, Dr. Parsa, of some dates?

10 A. I cannot hear you. Can you speak up louder,
11 please?

12 Q. May I remind you of some dates?

13 A. Go ahead.

14 Q. You closed on June 30th, correct?

15 A. Say it again.

16 Q. You closed your part of the transaction on
17 June 30th?

18 A. No. It was July 1st.

19 Q. And Mr. Flores came to see you on July 2nd?

20 A. I don't -- what I remember, it was July 1st.

21 Q. The day after he closed he came to see you?

22 A. Well, you know, I'm not really comfortable to
23 answer your questions right now. You're talking about
24 referring to a year ago, and I don't understand. We are
25 talking about this order or we are talking about the

1 case? We are not here in trial, Mr. Kirk, right now.

2 Q. You needed an --

3 THE COURT: Doctor, if you can answer the
4 questions, just answer them.

5 THE WITNESS: Well, you know, Judge, you
6 know -- well, you know, I just --

7 MR. BROWN: Answer the question.

8 THE WITNESS: No, I do not remember that I
9 had a meeting with Mr. Flores on July 2nd.

10 Q. (BY MR. KIRK) Why couldn't you pay Albert
11 Flores all of his share on July 2nd?

12 A. On July 6th what?

13 MR. BROWN: Judge, that --

14 MR. KIRK: 2nd.

15 MR. BROWN: -- that assumes a legal
16 conclusion that he was doing some other share. That's
17 irrelevant to this -- to this hearing. It's an attempt
18 to try the case in this hearing.

19 THE COURT: I'm going to overrule the
20 objection.

21 You -- you can go ahead and answer that.

22 THE WITNESS: There -- there are no such
23 agreement that I have to return his share. Actually,
24 I -- he sold his existing share, the 50 percent, to me
25 on July 1st. So what you are telling me is totally

1 irrelevant based on the document that you have.

2 Q. (BY MR. KIRK) Please answer my question. Why
3 could you not pay Albert Flores his full share on
4 July 2nd?

5 MR. BROWN: Objection, asked and answered.

6 THE COURT: It -- it has been asked and
7 answered. He's -- he's saying he didn't -- he didn't
8 owe it, as I understand his testimony.

9 THE WITNESS: He --

10 Q. (BY MR. KIRK) What happened between July --
11 June 30th and July 2nd that made it right for you to
12 deny Mr. Flores his full share?

13 A. We had agreement --

14 MR. BROWN: Objection, asked and answered.

15 THE COURT: No. No. Overruled.

16 Go ahead. You may continue.

17 THE WITNESS: We had agreement with
18 Mr. Flores, your client, way prior than that. He didn't
19 want to be involved in anything. He didn't want to --
20 he was tired of everything. He said, you know, This is
21 the -- this is what I want, \$280,000, and that was based
22 on our agreement. He resigned on July 1st. He sold the
23 remaining share to me, and he deposited the check. I
24 mean, we already had the agreement. And I -- and I
25 don't understand why you are interfering with my

1 agreement with your client.

2 THE COURT: Mr. Kirk, any further
3 questions?

4 MR. KIRK: No. No, not from this witness,
5 Your Honor.

6 THE COURT: Mr. Brewer, do you wish to
7 question the witness?

8 MR. BREWER: Yes, Your Honor, just a few
9 questions. Thank you.

10 CROSS-EXAMINATION

11 BY MR. BREWER:

12 Q. Jim Brewer on behalf of WestStar Title again.
13 Mr. Parsa, you've heard about a Western Heritage Bank
14 account, correct?

15 A. Yes.

16 Q. Who set that account up?

17 A. Myself.

18 Q. Were you the only signatory?

19 A. Yes.

20 Q. Why was Mr. Flores not a signatory to that
21 account?

22 A. Because he -- he resigned the day before. He
23 resigned July 1st.

24 Q. Did you also set up the Wells Fargo Bank
25 account?

1 A. No. That was open long time ago since.

2 Q. Is there a Western -- Wells Fargo Bank account
3 in the name of Montoya Park Place?

4 A. No.

5 Q. Who controls Westmount Group, Inc.?

6 THE WITNESS: Should I answer this?

7 MR. BROWN: Objection, Your Honor. The
8 question is vague and calls for a legal conclusion.

9 THE COURT: Overruled.

10 You can answer.

11 THE WITNESS: I'm the president.

12 Q. (BY MR. BREWER) Are you also the sole
13 shareholder?

14 A. Yes.

15 Q. And you're familiar with -- there was a
16 temporary restraining order and also a temporary
17 injunction issued in this case. Are you familiar with
18 those?

19 A. Yes.

20 Q. Both those orders enjoined you and Montoya Park
21 Place, Inc., from spending, transferring or alienating
22 any of the sale proceeds. Is that -- is that a fair
23 rendition?

24 A. Yes. I said yes.

25 Q. You need to answer orally.

1 A. Yes.

2 Q. But apparently the money was already
3 transferred. Is that a fair assessment?

4 A. Can you explore the idea? I don't understand.

5 Q. At the time these orders were entered, did
6 Montoya Park Place or yourself have the sale proceeds?

7 A. Yes, prior that -- prior to the TRO.

8 Q. Did you have the sale proceeds at the time the
9 TRO was entered and the temporary injunction was
10 entered?

11 A. I answer you that was -- the TRO happened
12 after. The -- the -- the money was transferred prior
13 any -- any lawsuit.

14 Q. So at the time these orders were entered,
15 Montoya Park Place and yourself did not have any of the
16 sale proceeds; is that correct?

17 A. Yes.

18 Q. Did you notify the Court or any of the parties
19 of that fact?

20 A. I mean, my attorney knew but there was a
21 confusion, I guess. They were confused.

22 Q. Okay. Have you talked to any attorneys about a
23 bankruptcy filing?

24 MR. BROWN: I'll -- I'll object,
25 Your Honor, to the relevance.

1 MR. BREWER: Just goes to the danger of the
2 funds.

3 THE COURT: No. But I'm going to sustain
4 that on the basis of if he has, that's protected
5 attorney/client privilege.

6 MR. BREWER: Fair enough.

7 Q. (BY MR. BREWER) Who borrowed the money that
8 the -- some of these -- that these sale proceeds are
9 pledged to? Was it Westmount?

10 A. What money? The -- the -- the line of credit
11 you are referring to?

12 Q. There are pleadings saying that the money is
13 pledged to secure a loan. Whose loan is it?

14 A. There are several loans.

15 Q. Several loans?

16 A. Yes.

17 Q. Who are the borrowers?

18 THE WITNESS: Do I answer that?

19 MR. BROWN: Yes.

20 THE WITNESS: It's a big list. I don't
21 remember. I have to go through my list.

22 MR. BREWER: Okay. No further questions.
23 Thank you.

24 THE COURT: Ms. Kelley, do you have some
25 questions?

1 MS. KELLEY: Yes, Your Honor. Thank you.

2 CROSS-EXAMINATION

3 BY MS. KELLEY:

4 Q. Mr. Parsa, did you -- were you represented by
5 counsel on the previous hearing for the Court's
6 reconsideration of this Court order on May 18th, 2021?

7 A. Yes.

8 Q. Do you remember testifying in that hearing?

9 A. Yes.

10 Q. At no point did you inform the Court of a
11 pre-withdrawal penalty of Wells Fargo if you withdrew
12 the funds; is that correct?

13 A. At that time, for some reason that I don't
14 know, my previous attorney did not mention it. I don't
15 know why he didn't mention it.

16 Q. Okay. And -- I'm sorry. Can you please --
17 I -- I talked over you.

18 A. Yeah. I don't know why he didn't mention it.
19 And even if you look at the -- the script, I tried to
20 say something, but Judge asked me to consult my
21 attorney. I couldn't say anything.

22 Q. So 10 days later -- well, let me ask you this:
23 On May 18th, 2021, how much -- what was the total amount
24 that you possessed in the Wells Fargo treasurer money
25 market accounts?

1 A. You can see the -- the bank statement that you
2 already have.

3 Q. On May -- I didn't -- I don't have a bank
4 statement from May 18th, 2021.

5 A. You know, the letter from the bank, you can see
6 the -- the amount in the bank. It says 338 and 700.

7 Q. What date is that letter?

8 A. I don't have it in front of me.

9 Q. Okay. My question is, on the Court's deadline
10 for you to deposit the Court registry -- into the Court
11 registry on May 28th, 2021, did you have \$700,000 and
12 \$338,000 to put -- to deposit into the Court registry?

13 A. I didn't have --

14 Q. I'm sorry?

15 THE COURT: Could you repeat that? I
16 didn't hear it.

17 THE WITNESS: Well, you know, you -- she's
18 trying to tell me that if I had. No, I didn't. That
19 the corporation has, not me.

20 Q. (BY MS. KELLEY) And you are -- when you say
21 "the corporation," you meant -- you mean Westmont Creek,
22 Inc. [sic]?

23 A. Westmount who? Group?

24 Q. What -- what corporation had the funds?

25 A. Westmount Group. And, ma'am, let me stop you

1 here. You tried to tell me that I had the money and I
2 didn't -- I did not obey the Court order, which is
3 wrong. I did not --

4 Q. No. I'm sorry, sir. That wasn't -- that was
5 not my question.

6 On -- on May 28th, 2021, did Westmont Group
7 [sic], the account holder, held in their accounts enough
8 funds to abide by the Court order?

9 A. I believe so. Yes.

10 Q. And you are the principal agent or principal
11 owner -- I'm sorry -- of Westmont Group?

12 A. Ma'am, the money is there, but it's pledged to
13 the loan. Do you expect me to break the law?

14 MR. BROWN: Just answer the question.

15 THE COURT: Question is you are the
16 principal owner and shareholder of Westmont Group. I
17 think that's what she asked you.

18 THE WITNESS: Yes.

19 Q. (BY MS. KELLEY) What is the primary business
20 of Westmont Group?

21 MR. BROWN: Objection, irrelevant.

22 THE COURT: I think that is irrelevant.
23 Yeah, I'll sustain that.

24 Q. (BY MS. KELLEY) After the hearing on May 18th,
25 2021, and after the Court's ruling, what was your

1 understanding that the Court's ruling was?

2 A. That I need to transfer the funds into the
3 registry of the Court.

4 Q. And why did you not transfer the funds into the
5 Court registry?

6 A. I talked to my attorney --

7 MR. BROWN: No. Okay.

8 To the extent that this requires him to
9 divulge attorney/client confidences, I'll assert his
10 privilege.

11 THE COURT: No. If you're rely- -- if your
12 answer involves communications with your lawyers you do
13 not have to answer. I'll sustain the objection to that
14 extent.

15 Q. (BY MS. KELLEY) Okay. Separate from what your
16 attorney advised you, did you at any point make a
17 decision not to abide by the Court order?

18 A. No.

19 Q. Okay. And as the Court asked on May 18th,
20 2021, if the funds are secured in the Wells Fargo
21 accounts, why can they not be deposited into the Court
22 registry?

23 A. I just explained to you that I cannot.

24 Q. Okay. So you, as Westmount Group, Inc., cannot
25 deposit the disputed funds into the Court registry

1 because -- not because you don't have access to them but
2 because of the penalties you may potentially get; is
3 that correct?

4 A. Well, you're asking two questions. Will you
5 give me one question?

6 Q. You have access to the funds?

7 A. At this time I don't.

8 Q. Who has access to the funds?

9 A. I mean, it's pledged to the loan, if -- if that
10 clarify your -- clarify --

11 Q. When was it pledged -- when was it pledged to
12 the loan?

13 A. July -- August 2020.

14 Q. Was that informed to the Court in May 18th,
15 2021, that it was pledged as collateral?

16 A. My attorney supposed to say it but he didn't
17 say it.

18 Q. Okay. And why did you pledge these funds as
19 collateral?

20 A. For get the line of credit.

21 Q. And is this af- -- you pledged these funds
22 after WestStar Title and Mr. Flores made a demand on
23 that; is that correct?

24 A. No. No.

25 MS. KELLEY: Nothing further, Your Honor.

1 THE COURT: Mr. Brown, do you have any
2 redirect?

3 MR. BROWN: No, Your Honor.

4 THE COURT: Do you wish to call any other
5 witnesses?

6 MR. BROWN: I do not.

7 THE COURT: Any of the other lawyers wish
8 to present any testimony or evidence?

9 MS. KELLEY: No, Your Honor.

10 MR. BREWER: No, Your Honor.

11 THE COURT: Okay. I've got a couple of
12 questions that are raised by the pleadings. Mr. Brown's
13 motion refers to interpleader and essentially makes an
14 argument that it is relief available to a totally
15 disinterested neutral party and not when different
16 parties have competing claims to the same money, so that
17 this type of remedy is inappropriate in this kind of a
18 dispute. I'm somewhat oversimplifying, but I think that
19 is the gist of what he is arguing.

20 Let -- let me have you all address that
21 issue as to whether this is or is not an appropriate
22 remedy in this situation where we do have competing or
23 apparently possibly competing interests from the two
24 sides.

25 And, Mr. Brown, you -- you raised that, so

1 I'll let -- let you go ahead and make that argument.

2 MR. BROWN: Okay. Right. The -- the
3 original joint motion did read, both in the title and in
4 the body of the motion, that it was a motion or
5 petition, so to speak, for interpleader to interplead
6 these -- these funds, the deposited funds, because there
7 are competing claims against them. So that's -- that's
8 why I addressed that possible remedy in my motion for
9 reconsideration.

10 And -- and I -- and so on that basis, I
11 don't think they're properly to be interpleaded because
12 what you have are parties, meaning Fidelity and
13 WestStar, who are not disinterested stakeholders. In
14 fact, they have claims.

15 And I -- and I put this in our -- in our
16 motion for reconsideration. They have claims, both
17 breach of contract and breach of warranty claims. And
18 they say that, Well, we're entitled to this money
19 because of the contractual provision and because of the
20 warranty that was made in an affidavit. And that may
21 well be the case when it -- when it all gets fleshed
22 out. I don't know.

23 But simply having claims to funds in the
24 nature of the breach of contract, and -- and those
25 parties have already -- those funds have already changed

1 hands as between the contracting parties doesn't give
2 any party a right to then try to interplead monies that
3 they -- they stake a claim to, unless they're a
4 disinterested stakeholder and the nature is some kind of
5 insurance action where some kind of entity holds -- you
6 know, insurance entity holds some amount of money that
7 there are competing claims against. And they're putting
8 them in the Court and saying, Judge, we don't know
9 exactly who is entitled to these proceeds, but there's
10 many competing claims so we're putting them into the
11 registry of the Court. And once it's decided, then they
12 can be disbursed through the appropriate parties.

13 Now, when we filed our -- our reply, I had
14 received the response at that point, and they had
15 changed the character of the motion and said, Well,
16 these are really just -- this is a request that funds be
17 deposited into the registry. And that's when I
18 responded in our reply that there wasn't any evidence to
19 show that these funds were about to be lost, because
20 they've been on deposit since July of 2020 and they
21 haven't changed in character or in who is holding them
22 since that date. So it's not appropriate to plead them
23 into the registry of the Court.

24 THE COURT: They -- they didn't change when
25 they went into the Westmount Group and when they got

1 pledged for collateral to his loan for his practice?

2 MR. BROWN: Well, the -- the -- the
3 monies -- the monies, when they left the Western
4 Heritage account, when they were taken out of that
5 account, they were placed in Wells Fargo accounts, and
6 they were placed in the name of Westmount Group, Inc.
7 But at that time there was no lawsuit on file. There
8 certainly --

9 THE COURT: -- the -- the initial TRO.

10 MR. BROWN: Right. Because the -- the
11 initial case wasn't filed until September of 2020, and I
12 attached to our motion for reconsideration the -- the
13 signature card for Mr. -- or for -- excuse me --
14 Dr. Parsa, indicating that at that time, that's when the
15 credit line was -- was opened up, on August 7th of 2020.
16 And I'd ask the Court to take judicial notice of the
17 exhibit -- the pleadings and the exhibits attached to
18 the pleadings for purposes of this hearing.

19 But at that time, August 7th, 2020, there
20 was no lawsuit on file, and so at that point there's --
21 you know, the monies went into the -- into the accounts
22 in the Westmount Group, Inc., and that's where they've
23 remained the whole time. So when the temporary
24 injunction -- and I wasn't involved in that process.
25 When that was put in place, the monies were in the

1 accounts that they were in and have remained in to this
2 day.

3 THE COURT: Okay. Do any of the other
4 lawyers want to be heard on -- on this issue?

5 MR. KIRK: I do, Your Honor.

6 MR. BREWER: Go ahead, Mr. Kirk. We'll
7 stay in the same order.

8 THE COURT: Mr. Kirk, you may proceed.

9 MR. KIRK: Yes, Your Honor.

10 We know more about what Dr. Parsa didn't
11 tell us, and we've learned that since the May 18th
12 hearing when the interpleader motion was reconsidered
13 and left in place. If interpleader was not an
14 appropriate vehicle, then this Court has power to vacate
15 the interpleader order. And this Court also now has the
16 facts and the law that would enable it to order the
17 funds impounded into the registry anyway, because there
18 is a danger of depletion.

19 THE COURT: Okay. Mr. Brewer.

20 MR. BREWER: Yes. I did address this in
21 our response to the second motion for reconsideration
22 that was filed on June 15th. I apologize if the Court
23 doesn't have that.

24 But, basically, in a nutshell, I would say
25 the original motion was unfortunately titled, and I can

1 say that since I signed off on it. It was titled as an
2 interpleader and it sought -- it basically -- the
3 substance is clear. It sought to compel the defendants,
4 not -- not WestStar and not Fidelity Title -- the
5 defendants to deposit the funds into the registry of the
6 Court.

7 And in my reply I did add some cases
8 that -- that talk about the Court's inherent authority
9 to do that, to compel a defendant to -- particularly
10 when there's a particular fund in dispute, to compel
11 that party to deposit it into the registry of the Court.
12 That was what was the substance of what was sought in
13 the original motion, and that is still what we're
14 seeking today.

15 THE COURT: Ms. Kelley.

16 MS. KELLEY: Your Honor, I -- sorry. I
17 just -- I just had a -- essentially it's exactly what we
18 were just reiterating. We -- we -- there is -- that
19 danger has not moved. Also, I do want to address that
20 other than Mr. Parsa's testimony today, we have not seen
21 documentation from the accounts of the current status of
22 the money in the accounts.

23 I -- like the Court pointed out, it's July
24 of 2021. And so the concern is here, if they're active
25 as they were, why hasn't there been recent documentation

1 filed with the Court, specifically after the last
2 hearing and the last Court order, within the last
3 30 days of the activity of the accounts? If there is --
4 if the -- and if the testimony in the last hearing were
5 the money was there, then there's no reason for it not
6 to be deposited into it.

7 There is multiple claims between these
8 parties to these funds. These are disputed funds that
9 were agreed to not be moved. The danger is they have
10 been moved already. They have been moved twice already,
11 and one of -- and now we are hearing that they're
12 being -- there's multiple -- I think -- I think
13 Mr. Parsa testified he cannot even identify the allotted
14 individuals that are the borrowers to the collateral for
15 this loan.

16 I mean, you know, the constant change -- I
17 don't know if he's making money off the money. We don't
18 have any of that documentation today, so that the
19 inherent risk has not changed. There has been nothing
20 new that has changed to allow Mr. Parsa to keep these
21 funds when there is -- there is no documentation in
22 evidence that they actually are still, up to today, in
23 the accounts. I mean, there's nothing provided at
24 today's hearing, Here are the statements; here is the
25 money.

1 THE COURT: Okay. Let me ask Ms. Kelley
2 and Mr. Brewer and Mr. Kirk a question, and you can
3 answer it in any order you wish to or just designate
4 one person to answer it if you wish. It sounds like I
5 am hearing that it would be impossible for Dr. Parsa to
6 go get the money and put it into the registry of the
7 Court and that if he could, he would certainly have to
8 pay 50-, 60 grand in an early withdrawal fee. And
9 notwithstanding that, it may not be his money to be able
10 to go get, if it's pledged as collateral and there's a
11 whole bunch of other people that are involved as people
12 who have loans here.

13 So is it doable for me to have an order
14 that would work and that would give you what you want to
15 have, which is, as I understand it -- there is a dispute
16 over this money, which are the proceeds of a sale, and
17 you-all want to be sure that money doesn't disappear
18 before your dispute is resolved. So I guess that's a
19 sort of complicated question, but --

20 MS. KELLEY: Judge, I'll let Mr. Brewer and
21 Mr. Kirk respond as well. I just wanted to point out I
22 don't -- we don't know if it's impossible. We haven't
23 seen any documented attempts from -- these are our
24 conversations with Wells Fargo. These are the e-mail
25 communications of what would happen if we withdrew.

1 These are the dates where I could have complied with the
2 order. This is the amount of funds that I can at least
3 put into the account to show I attempted a compliance.

4 And as an officer of the Court, I spoke to
5 Mr. Miranda before Mr. Brown took over this case, and
6 I -- we were under the impression that he was -- they
7 were going to abide by the Court order come Friday, May
8 28th. And then before we know it there's new counsel.
9 So none of those concerns were -- was shared to me by
10 the previous counsel.

11 And I'm not asking Mr. Parsa to divulge his
12 communications. I'm just speaking to Mr. Miranda's
13 communications. At no point did he say, Listen, we've
14 been contacting Wells Fargo; we've been trying to
15 wire -- get the cashier's check to deposit into the
16 Court registry; this is what we've done. At no point
17 was that informed to us. This is the first time we're
18 hearing of it, and, frankly, we don't have any
19 documentation to show what attempts to show that it's
20 impossible. How do I -- there -- there's nobody here
21 from the bank. There's no documents to show that. And
22 I don't think that's changed.

23 THE COURT: Okay. Mr. Brewer, anything you
24 wish to add to that?

25 MR. BREWER: I guess I don't have any

1 brilliant ideas. I think it is not clear what Mr. Parsa
2 did with the rest of the sale proceeds. It's not
3 clear -- I believe there was -- there's been references
4 to the loan being about \$180,000. I don't know if that
5 can be paid off or other collateral given to secure
6 the -- this loan instead of our proceeds.

7 I guess I would just argue that if -- if
8 our proceeds are needed to secure this \$180,000 loan,
9 that just makes me all the more worried that this fund
10 is not going to be there for us at the end of the day.

11 THE COURT: Mr. Kirk.

12 MR. KIRK: Your Honor, the funds that
13 Dr. Parsa put up to comply with the TRO and the
14 injunction were funds that were beyond his reach already
15 and, therefore, beyond our reach already. So I think
16 the money he should put up should be out of money he can
17 reach.

18 THE COURT: So whether it is those funds or
19 other funds, are you asking for just a sum of money to
20 be put into the registry of the Court?

21 MR. KIRK: Well, any sum is better than no
22 sum.

23 THE COURT: I agree with that, but let --
24 let me ask you-all a procedural question. If I were to
25 order the money to be placed into the registry of the

1 Court and if that does cause some sort of early
2 withdrawal penalty, can I attach to my order a bond so
3 that if there was 40- or \$50,000 that was a penalty for
4 the withdrawal, that that would be -- the plaintiffs who
5 are suing Dr. Parsa would be responsible for that cost,
6 if moving the money into the Court is what incurs that
7 cost? Is that too confusing a question for anybody to
8 answer?

9 MR. KIRK: It's not practical for
10 Mr. Flores, Your Honor. He doesn't have that kind of
11 money laying around.

12 MR. BREWER: I think there -- there might
13 be a bond that would be appropriate if the parties -- if
14 the plaintiffs were to lose the case.

15 THE COURT: Yeah. I mean, from --

16 MR. BREWER: -- the fact that --

17 THE COURT: -- you got all of it, and then,
18 you know, it would -- then the amount of that early
19 withdrawal fee would come out of the part that the
20 plaintiffs won. And it would be -- it would mean they
21 would get 50 grand less. If they lost, then he got all
22 the money back, it would be a loss to Dr. Parsa, and if
23 that loss was caused by improvidently depositing it, in
24 that situation he should be reimbursed for -- or
25 conceivably should be reimbursed for -- for the movement

1 of those funds.

2 MR. BROWN: Judge, may I just respond just
3 briefly? In fact, I provided the Court in my e-mail
4 with a case, and that's exactly what the case speaks of,
5 is that -- some authorities cited towards the end of the
6 case where courts are saying there -- there needs to be
7 evidence that they're going to be lost or depleted. But
8 that evidence also goes to assessing a bond as to the
9 parties requesting that the monies be placed on deposit.

10 THE COURT: So there is a procedural
11 mechanism for me to impose a bond requirement on my
12 order and --

13 MR. BROWN: I think so. I don't know --

14 THE COURT: Yeah. I mean, I'm -- the bond
15 would be conditioned on they'd have to pay a certain
16 amount. If at the end of the day Dr. Parsa was
17 completely exonerated of any and all claims and -- and
18 he suffered a loss, that they would have to make that
19 up.

20 MR. BREWER: I think that would be
21 appropriate, four and a half percent of whatever's
22 deposited into the registry of the Court. Is that what
23 the Court's thinking?

24 THE COURT: It is, because that's what I am
25 told is the -- is what the penalty would be. And I'm

1 not sure if the four and a half percent was on -- I
2 think it's, like, 1,038,000, and I don't know if the
3 four and a half percent is on all of that. Because
4 there's two different chunks, and I'm not sure which one
5 the four and a half percent was on.

6 MR. BREWER: I don't know which one is
7 pledged.

8 MR. BROWN: Your Honor, I believe that --
9 that Dr. Parsa testified that it was 4.5 percent on the
10 full amount of 1,038,000, but there's also additional
11 monies that -- that represent tax consequences and other
12 penalties.

13 THE COURT: How are tax -- how are taxes
14 flowing from a deposit into the registry of the Court?
15 That's not --

16 MR. BROWN: No, from withdrawal of the
17 monies. From withdrawal of the monies.

18 THE COURT: I didn't hear what you said.

19 MR. BROWN: From withdrawal of the monies.
20 You have to leave them in there for so long. If you
21 take them out early then --

22 THE COURT: Well, but if you take them out
23 early and put them into the registry of the Court,
24 you're saying that is a taxable event? I mean, that --
25 that would not be considered income to Dr. Parsa or to

1 anybody else, would it?

2 MR. BROWN: I think -- well, I don't
3 purport to be a tax expert, but once you remove monies
4 from an account like that, there -- I think there --
5 there are certain tax consequences, because you have to
6 move -- you move those monies initially in there for a
7 benefit that you're getting. But I -- I'm getting out
8 of my depth.

9 THE COURT: I don't see tax consequences.
10 I may be wrong, but I don't --

11 MR. PARSA: Can I say something?

12 THE COURT: And I'm not -- I'm not stopping
13 you from saying anything, but I'm suggesting you talk to
14 your lawyer before you say whatever you want to say.

15 (Discussion off the record.)

16 MR. KIRK: Your Honor, would you ask
17 Dr. Parsa to what extent he has encumbered with loans
18 either of the accounts?

19 THE COURT: Wait until we're finished and
20 then I'll respond to that.

21 MR. PARSA: Can I tell you something?

22 MR. BROWN: I guess --

23 THE COURT: -- with your client?

24 MR. BROWN: Yeah, I did. And I guess I --
25 I can ask him a question about his understanding of the

1 tax consequences, and then I guess Mr. Kirk wants to ask
2 him a question about the encumbrance.

3 THE COURT: Right. So why don't you ask
4 him about the tax consequences first, and then we'll
5 have -- hear Mr. Kirk's question.

6 REDIRECT EXAMINATION

7 BY MR. BROWN:

8 Q. Dr. Parsa, have you consulted with an
9 accountant regarding withdrawal of these funds?

10 A. Yes, and also -- yes. And also --

11 Q. And would you explain your understanding of the
12 tax consequences of removal of the funds? And I'm not
13 saying you individually removing the funds but the
14 account holder removing the funds.

15 A. Well, you know, the -- the -- I actually spoke
16 to two individuals, one with my accountant and the
17 second with the -- with the banker, and he tells me that
18 first of all --

19 Q. Just talk about your understanding.

20 A. Yeah. My understanding is that if -- if we
21 close the account tomorrow, that virtually is
22 impossible, there's going to be tax consequences based
23 on the money that the account has earned so far and --
24 because the way that the account is designed, you have
25 to have it for years. It's not just for a couple of

1 months and/or a year to just close it. And then it's
2 going to take, too, time to liquidate the account. It's
3 not something I can just do it overnight.

4 THE COURT: So you are -- it is your
5 understanding there would be tax consequences on the
6 income that has been earned?

7 THE WITNESS: Yes. Yes, Your Honor.

8 THE COURT: -- interest, which is rather
9 low for the last year or two. I mean, banks aren't
10 paying high interest rates.

11 THE WITNESS: Well, you know, this is a
12 money market account. It could go to -- up to eight to
13 10 percent.

14 THE COURT: Up to 10 percent?

15 THE WITNESS: Eight to 10 percent. It's a
16 money market.

17 Q. (BY MR. BROWN) Of interest or tax?

18 A. I mean, interest eight -- from eight to 10 and
19 consequences of tax for it if you just close the
20 account.

21 MR. BROWN: Can I ask one more question,
22 Judge?

23 THE COURT: You may.

24 Q. (BY MR. BROWN) The -- you -- I think you
25 testified earlier that there's about \$180,000 that was

1 borrowed on the line of credit -- not taken from the
2 accounts but on the line of credit?

3 A. Yes.

4 Q. Will -- if you're having -- if you remove these
5 funds, how will that affect the line of credit in terms
6 of that \$180,000?

7 A. Honestly, it's going to be very bad, because I
8 don't know even -- I cannot even imagine if I can do
9 that.

10 Q. What I'm asking is, do you have to pay that
11 amount?

12 A. Yes. Absolutely. I have to pay it overnight.

13 Q. The 180,000?

14 A. Yes.

15 MR. BROWN: All right. I'll pass the
16 witness.

17 THE COURT: Well, just on that topic, if I
18 ordered him to --

19 MR. KIRK: Dr. Parsa --

20 THE COURT: -- remove -- wait. Let me just
21 ask a question, please.

22 If I ordered him --

23 MR. KIRK: -- is 180,000 the total?

24 THE COURT: -- to pay into the registry of
25 the Court --

1 MR. KIRK: Is that the total encumbrance on
2 the funds?

3 THE COURT: -- then that -- that would
4 cover what's been pledged. So if -- instead of a
5 million three, it would -- that would be 850,000.

6 MR. KIRK: I wasn't able to hear what
7 people were saying. I'm sorry.

8 THE COURT: That's okay. I think what I
9 heard Dr. Parsa say is that there is \$180,000 that is
10 pledged.

11 THE WITNESS: Your Honor, it's at least
12 \$180,000. I can get you that exact amount but at least
13 \$180,000.

14 THE COURT: All right. Okay. Anyway,
15 Mr. Kirk, let's go ahead and -- I interrupted you. You
16 were about to ask some questions. And I think they were
17 about how the money is encumbered, so let's go ahead
18 with that now.

19 RECROSS-EXAMINATION

20 BY MR. KIRK:

21 Q. -- then the rest of it could come into the
22 registry with no harm to Dr. Parsa?

23 THE COURT: What I was asking.

24 MR. BROWN: Can you rephrase that? I -- I
25 didn't understand that. I didn't hear it, partly.

1 Q. (BY MR. KIRK) -- the extent of the borrowing
2 that encumbers these two accounts, or one of the two
3 accounts, 180,000. Then the rest of the account should
4 be available to come into the registry?

5 THE COURT: Yeah. Yeah. So that would be
6 roughly 850.

7 MR. BROWN: I don't -- I don't know if
8 that's correct.

9 Dr. Parsa, what's your understanding of --

10 THE WITNESS: Well, you know, the concept
11 is that the line of the credit, the way it works, the
12 way that I was explained by the banker is that I cannot
13 break the contract with them. It's already -- I'm
14 engaged in a contract with them. It's not a question of
15 pay them 180,000. If Mr. Kirk wants to pay me \$180,000,
16 I can do that tomorrow. I cannot do that. I can't just
17 break the contract with them. It's something that I
18 cannot do it. It's not because I don't want to.

19 THE COURT: Okay. Is there anything
20 further that --

21 Q. (BY MR. KIRK) You're telling me you could pay
22 the loan?

23 A. I'm sorry?

24 THE COURT: I think he asked -- we didn't
25 quite hear, Mr. Kirk. Could you repeat that, please?

1 MR. BROWN: I think his Internet -- oh,
2 there it is.

3 THE COURT: Mr. Kirk, are you muted or did
4 we lose you -- your audio somehow?

5 MR. KIRK: Everybody has gone silent on the
6 screen and also immobile, Your Honor, so --

7 THE COURT: No, I --

8 MR. KIRK: -- see blinking eyes.

9 THE COURT: I'm moving my head, and it
10 looks like I'm -- I can see it on here. Can -- can
11 you-all hear me?

12 MR. BREWER: Yes.

13 MS. KELLEY: Yes.

14 MR. BROWN: Yes, Your Honor.

15 THE COURT: Okay. Everybody can hear me?

16 MR. KIRK: Yes, Your Honor.

17 THE COURT: Here is what I think we need to
18 do. I will modify the order as follows: And Dr. Parsa
19 will be ordered to deposit \$750,000 into the registry of
20 the Court within 10 days. And to whatever extent there
21 is an issue with the bank, in terms of doing that, all
22 counsel are going to communicate and if there is some
23 impossibility or some big penalty because that is
24 happening or because I'm ordering that, then I want to
25 immediately hear that within that 10 days. So that

1 would be some time next week.

2 I do want to have a bond, which would be
3 contingent, which would mean that if there is that early
4 withdrawal that does kick in, there would be a bond in
5 place to cover that expense so that Dr. Parsa would not
6 be the person penalized if he ultimately prevails at the
7 end of all this litigation.

8 So, Mr. Brewer, you seem to have a good
9 amount of familiarity with this -- these sort of
10 documents. Can you prepare or obtain that sort of a
11 bond that would cover that contingency?

12 MR. BREWER: Sure. Yes.

13 THE COURT: Okay. So 10-days from today --
14 I believe today is the 8th. Let me look at a calendar.
15 10 days would be the 18th, which is a Sunday, so we will
16 make it the 19th. So the funds have to be deposited on
17 or before the 19th. If there is some sort of snag with
18 the bank, bring that to my attention and we'll reconvene
19 and discuss that and have a hearing next week.

20 Anything further from either side at this
21 time?

22 MR. BROWN: No, Your Honor.

23 MR. KIRK: No, Your Honor.

24 MS. KELLEY: No, Your Honor. Thank you.

25 THE COURT: Okay. Thank you. We will be

1 adjourned.

2 (Proceedings concluded.)

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1 STATE OF TEXAS)

2 COUNTY OF EL PASO)

3

4 I, Maria I. Stallings, Official Court Reporter in
5 and for the 327th District Court of El Paso County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$97.00 and was
18 paid by Mr. James Brewer, Esq.

19 WITNESS MY OFFICIAL HAND this the 15th day of
20 July, 2021.

21

22 /s/ Maria I. Stallings
23 MARIA I. STALLINGS, Texas CSR# 8229
24 Official Court Reporter
25 327th District Court
500 E. San Antonio, Rm. 606
El Paso, TX 79901
(915) 546-2032
Expires May 31, 2023

EXHIBIT “F”

NO. _____

IN THE COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

In Re:

**KEYVAN PARSA, M.D. and
MONTOKA PARK PLACE, INC.**

Relators.

Original Proceeding Arising Out of
the 327th Judicial District Court of El Paso County, Texas
No. 2020DCV2997
(Hon. Thomas Spieczny)

**Petition for Writ of Mandamus, and
Request for Emergency Relief**

Respectfully Submitted,

By: /s/Troy C. Brown

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TABLE OF CONTENTS

IDENTITIES OF PARTIES AND COUNSEL	ii
TABLE OF CONTENTS.....	iv
INDEX OF MANDAMUS RECORD	v
INDEX OF AUTHORITIES.....	vii
REFERENCES IN THE PETITION	viii
STATEMENT OF THE CASE.....	ix
ISSUES PRESENTED.....	x
STATEMENT OF FACTS	1
SUMMARY OF THE ARGUMENT	12
ARGUMENT AND AUTHORITIES.....	13
I. Standard of Review.	13
II. The trial court erred when it ordered Relators to deposit \$750,000 in the registry of the court where there was no evidence the funds were in danger of being lost or depleted	15
PRAYER and CERTIFICATE OF SERVICE.....	23
APPENDIX:	
Appx. Tab 1. Joint Order to Compel Interpleader and Hold Funds Into Registry of Court (April 26, 2021)	

MANDAMUS RECORD:

Suit to Appoint a Receiver for a Corporation Under Texas Business Corporations Act § 7.05.A (filed September 16, 2020) Tab A

Defendants’ Motion to Dismiss a Baseless Cause of Action (filed October 5, 2020) Tab B

Plaintiff’s Second Amended Petition (Suit for Rescission of Contract, for Fraud in a Stock Transaction, for Unjust Enrichment, for Injunctive Relief, and to Appoint a Receiver) (filed November 23, 2020) Tab C

Motion for Temporary Restraining Order and Injunctive Relief (filed November 25, 2020) Tab D

Agreed Temporary Restraining Order (filed January 4, 2021) and Agreed Temporary Injunction (filed January 27, 2021)..... Tab E

Petition in Intervention of Weststar Title, LLC (filed January 6, 2021) Tab F

Fidelity National Title Insurance Company’s Original Petition In Intervention (filed January 22, 2021) Tab G

Albert Flores’ Answer to the Petition In Intervention by Weststar Title, LLC (filed February 3, 2021)..... Tab H

Albert Flores’ Answer to the Petition In Intervention by Fidelity National Title Insurance Company (filed February 4, 2021)..... Tab I

Counterclaim of Plaintiff and Third-Party Defendant Albert Flores for Comparative Negligence, Against Intervenor/Third Party Plaintiff Fidelity National Title Insurance Company (filed February 8, 2021) Tab J

Joint Motion to Compel Interpleader of Funds Into Registry of Court (filed April 21, 2021). Tab K

Joint Order to Compel Interpleader and Hold Funds Into Registry of Court (filed April 26, 2021)..... Tab L

Keyvan Parsa M.D. and Montoya Park Place, Inc.’s Response & Objection to Joint

Motion for Interpleader (filed April 26, 2021)	Tab M
Keyvan Parsa M.D. and Montoya Park Place, Inc.'s Motion for Reconsideration & Abatement of Order Granting Joint Motion for Interpleader (filed April 28, 2021)	Tab N
Keyvan Parsa M.D. and Montoya Park Place, Inc.'s Motion for Reconsideration of and to Abate Joint Order to Compel Interpleader and Hold Funds Into Registry of Court (filed May 28, 2021)	Tab O
Motion for Contempt of Court and Request for Sanctions (filed June 7, 2021).....	Tab P
Westar Title, LLC's Objection to Keyvan Parsa M.D. and Montoya Park Place, Inc.'s Motion for Reconsideration of and to Abate Joint Order to Compel Interpleader (filed June 15, 2021).....	Tab Q
Defendants' Response to Motion for Contempt of Court and Request for Sanctions (filed July 5, 2021)	Tab R
Keyvan Parsa and Montoya Park Place, Inc.'s Amended Reply to Albert Flores' Weststar Title, LLC's Response to Defendants' Motion for Reconsideration and to Abate Joint Order to Compel Interpleader (filed July 8, 2021).....	Tab S
Transcript of Motions Hearing, dated July 8, 2021 (filed July 8, 2021)	Tab T
Defendants' Exhibit 1, Hearing July 14, 2021 (filed July 14, 2021).....	Tab U

INDEX OF AUTHORITIES

Cases

<i>Castilleja v. Camero</i> , 414 S.W.2d 431, 433 (Tex.1967)	14
<i>In re Prudential Ins. Co. of Am.</i> , 148 S.W.3d 124, 135-36 (Tex.2004) (orig. proceeding)	13
<i>In re Reveille Resources (Texas), Inc.</i> , 347 S.W.3d 301, 304 (Tex.App.—San Antonio 2011, orig. proceeding)	14
<i>N. Cypress Med. Ctr. v. St. Laurent</i> , 296 S.W.3d 171, 178-79 (Tex.App.—Houston [14th Dist.] 2009, orig. proceeding)	13, 14, 18
<i>Walker v. Packer</i> , 827 S.W.2d 833, 839-40 (Tex. 1992) (orig. proceeding)	13
<i>Zhao v. XO Energy LLC</i> , 493 S.W.3d 725, 736 (Tex.App.—Houston [1st Dist.] 2016, no pet.)	14

Statutes

TEX. GOV'T CODE § 22.221(b)	3
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REFERENCES IN THE PETITION

Keyvan Parsa, M.D. and Montoya Park Place, Inc. are the Relators in this matter (Defendants and Intervenor-Defendants in the proceedings below) originally filed by Plaintiff Albert Flores (“Flores”).

For convenience, Keyvan Parsa, M.D. and Montoya Park Place, Inc. are referred to as “Relators,” “Parsa” or “Montoya.”

For convenience, the real parties in interest are referred to in this petition for writ of mandamus as “RPI,” “Weststar” or “Fidelity.”

The reference to “Respondent” in this petition for writ of mandamus is a reference to the Honorable Thomas Spieczny.

References to the Mandamus Record are abbreviated as “(MR).” Specific citation to an exhibit is by tab to a corresponding letter. For example, the citation to the Mandamus Record at Tab A is “(MR, Tab A)” and to Tab B as “(MR, Tab B).”

Certain documents in the Mandamus Record are also attached as an Appendix to the Petition. They are cited by the abbreviation “(Appx., Tab).” To avoid confusion, the Appendix tabs are assigned a number.

STATEMENT OF THE CASE

A. Nature of the Underlying Proceeding

The proceeding below involves claims by the Plaintiff and RPI to portions of the sales proceeds, including \$700,000, received by Relator Montoya Park Place, Inc. following the sale of real property described as Tract 3, Johannsen Subdivision in the City of El Paso, Texas (the “Property”). Both Plaintiff and RPI assert \$700,000 was owed and payable from the proceeds to Right IMMIX Capital, Inc. (“RIC”) at the time of the closing of the sale. It is undisputed RPI Weststar’s title search failed to discover a lien of record in favor of RIC which its insurer, RPI Fidelity, was forced to pay to RIC to satisfy the lien. RPI, despite Weststar’s mistake, nonetheless assert that Relator wrongly received the \$700,000 and filed a Joint Motion requesting that certain funds in the sum of \$1,038,000 (the “Deposited Funds”) be paid into the registry of the court.

Relators who entered into an agreed injunction which by its terms prohibits them from spending or transferring proceeds of the sale (i.e., the Deposited Funds) assert deposit into the registry is improper because there is no evidence the Deposited Funds are in danger of loss or depletion.

Nevertheless, the trial court issued an order on April 26, 2021, which requires deposit of \$750,000 into the court registry **on or before July 19, 2021**. Relators face contempt if they do not.

B. Respondent

Respondent is the Honorable Thomas Spieczny, presiding judge of the 327th Judicial District Court of El Paso County, Texas.

C. Respondent's Action

Respondent improperly ordered the deposit of the Deposited Funds into the registry of the Court.

STATEMENT OF JURISDICTION

The Court has jurisdiction over this matter pursuant to section 22.221(b) of the Texas Government Code. TEX. GOV'T CODE ANN § 22.221(b).

ISSUES PRESENTED

Did the trial court err by ordering Relators to deposit \$750,000 into the registry of the court where there is no evidence that the funds are in danger of loss or depletion?

PETITION FOR WRIT OF MANDAMUS

Keyvan Parsa, M.D. and Montoya Park Place, Inc., Relators, file this Petition for Writ of Mandamus and, as grounds therefore, would show as follows:

STATEMENT OF FACTS

On July 1st and 2nd, 2020, Montoya sold real property described as “Tract 3, JOHANNSEN SUBDIVISION an Addition to The City of El Paso,” Texas (the “Property”). The closing took place at Weststar Title. (MR, Tab C¹ ¶¶ 5, 8, 14 & Ex. B).

On September 16, 2020, Flores filed suit claiming that i) \$700,000 was due and payable out of the sale proceeds of the Property to Right IMMIX Capital, Inc. (“RIC”), ii) because RIC lent this sum to Montoya’s predecessor Johannsen Development Group, Inc. (which Parsa and Debra Jordan guaranteed (the “Guaranty”)), iii) but which amount was not paid at the closing. (MR, Tab A² ¶¶ 8, 9, 14, 15). In addition, Flores alleged Montoya Park Place was deadlocked (as between he and Parsa) and sought appointment of a receiver. (MR, Tab A ¶ 22).

Parsa and Montoya responded that Flores had transferred his fifty percent (50%) of the stock of Montoya to Parsa on July 1, 2020, and, thus, had no

¹ “Plaintiff’s Second Amended Petition (Suit for Rescission of Contract, for Fraud in a Stock Transaction, for Unjust Enrichment, for Injunctive Relief, and to Appoint a Receiver)” filed on November 23, 2020.

² “Suit to Appoint a Receiver for a Corporation Under Texas Business Corporations Act § 7.05.A” filed on September 16, 2020.

ownership interest to justify appointment of a receiver or to maintain the suit. (MR, Tab B³ & Ex. A (“Stock Purchase Agreement”)).

In his most recent pleading, despite having received \$280,000 from the sales proceeds on or about July 2, 2020 (and releasing any interest in Montoya), Flores seeks to rescind the Stock Purchase Agreement, asserting, among other things, fraud by Parsa. However, Flores acknowledges i) that prior to the sale (on February 4, 2020), he foreclosed on a deed of trust note for a lien he had held on the Property since September 2017, ii) that Montoya paid Weststar Title \$10,000 for a title policy, iii) that Weststar issued a title commitment reflecting “the Right IMMIX Capital lien had been ‘cut off’ by [Flores’] foreclosure,” and, finally, iv) that he signed the closing documents knowing the HUD-1 did not include any payment to RIC. (MR, Tab C ¶ 8, 14, 15, 17, 18 & Ex.D; Tab B, Ex. B). Flores additionally seeks \$338,000 for “his share” of the settlement proceeds and that a receiver be appointed to recover the \$700,000.⁴ (MR, Tab C ¶ 17, 18, 34).

Flores then sought a temporary restraining order and temporary injunction, (MR, Tab D⁵), and on December 14, 2020, and January 15, 2021, respectively, Flores, Parsa and Montoya entered into an Agreed Temporary Restraining Order and Agreed Temporary Injunction (the “Injunction”). The Injunction, filed of

³ “Defendants’ Motion to Dismiss a Baseless Cause of Action” filed on October 5, 2020.

⁴ To date, Flores has neither set a hearing on nor otherwise sought appointment by the trial court of a receiver.

record on January 27, 2021, restrained Parsa and Montoya from spending, transferring or alienating the proceeds of the sale of the Property. (MR, Tab E⁶).

On January 6th and 22nd, 2021, respectively, Weststar (as to Montoya) and its insurer, Fidelity (as to Parsa, Montoya Park Place, Flores, and Deborah Jordan), intervened in the lawsuit alleging generally, among other claims, that Montoya, Parsa and Flores had breached their obligations and warranties under one “Commercial Affidavit as to Debts and Liens” (“Debts and Liens Affidavit”), dated July 1, 2020, and signed at the closing, and that Parsa and Jordan had breached the Guaranty. (MR, Tab F⁷ ¶¶ 10-11; Tab G⁸ ¶¶ 34, 49-52, 53-58). Weststar sought injunctive relief, Fidelity did not, and, although counsel for Parsa and Montoya kept counsel for Weststar and Fidelity apprised of negotiations with Flores as to the proposed injunction (as well as where the funds were on deposit), neither chose to be a party to the Injunction. (MR, Tab F ¶15; Tab G; Tab P & Ex. B p. 8-9).

Flores answered the Weststar and Fidelity petitions in intervention and filed a counterclaim against Fidelity. Notably, Flores alleges the failure to identify the

⁵ “Motion for Temporary Restraining Order and Injunctive Relief” filed on November 25, 2020.

⁶ “Agreed Temporary Restraining Order” filed January 6, 2021 and “Agreed Temporary Injunction” filed January 27, 2021.

⁷ “Petition of Intervention of Weststar Title, LLC.”

⁸ “Fidelity National Title Insurance Company’s Original Petition in Intervention.”

RIC lien and to include payment to it from the sales proceeds was due to Weststar's own negligence:

Texas is a comparative negligence state, and clearly, the greater negligence is overwhelmingly on the part of WESTSTAR (as authorized agent of FIDELITY NATIONAL TITLE INSURANCE COMPANY). The standard of care, is far greater for the title company, because it is a professional, of whom skill and expertise is expected. There is no good excuse for failing to detect (or failure to understand?) the recorded subordination agreement; it was blatant and gross error to have missed it, and WESTSTAR TITLE as agent and FIDELITY NATIONAL TITLE INSURANCE COMPANY as authorizing principal should have to answer for all the harm proximately caused by their negligence.

(MR, Tab H,⁹ Tab I,¹⁰ & J¹¹ ¶ 7).

On April 21, 2021, Fidelity and Weststar filed their "Joint Motion to Compel Interpleader of Funds into Registry of Court" ("Joint Motion") in which they acknowledged that 1) the sums of \$338,000 and \$700,000 were on deposit in two (2) Wells Fargo Bank accounts (the "Deposited Funds"), 2) Parsa and Montoya had consented to the Injunction, and 3) the Injunction restrained them from spending, transferring or alienating the Deposited Funds. Nevertheless, Fidelity and Weststar alleged "[t]he Parties have asserted competing claims to the Deposited Funds" and Fidelity and Weststar "object to the monies remaining

⁹ "Albert Flores' Answer to the Petition in Intervention by Weststar Title, LLC" filed on February 3, 2021.

¹⁰ "Albert Flores Answer to the Petition in Intervention by Fidelity National Title Insurance Company" filed on February 4, 2021.

outside of the security of the Court Registry” and “requests [sic] that the Court enter an order compelling Intervenor Defendants to interplead the Deposited Funds into the registry of the Court *where it will remain until the Court determines to whom the Deposited Funds should be awarded.*” (MR, Tab K & Ex. B (emphasis added)).

On April 26, 2021, believing the Joint Motion was joint as to *all parties*, and without a hearing, Judge Spieczny entered an order granting it. (MR, Tab L; Tab P, Ex. 2, p. 5, 7, 30, 31). On the same day, Parsa and Montoya filed a response and objection to the Joint Motion,¹² and on April 28, 2021, their first Motion to Reconsider¹³ the order. (MR, Tab M & N). In the Motion to Reconsider, Parsa and Montoya noted that the case was recently mediated (on April 19, 2021) and that there were no claims at mediation that either defendant had “violated or breached the terms of the Temporary Injunction.” Furthermore, then-counsel for Parsa and Montoya posited that the motion was “retributory by [Fidelity] for not being able to resolve this matter at mediation.” (MR, Tab N ¶ 7).

On May 18, 2021, Judge Spieczny held a hearing on the Motion to Reconsider. He first heard argument from counsel. Counsel for Parsa and

¹¹ “Counterclaim of Plaintiff and Third-Party Defendant Albert Flores for Comparative Negligence, Against Intervenor/Third Party Plaintiff Fidelity National Title Insurance Company” filed on February 8, 2021.

¹² “Keyvan Parsa M.D. and Montoya Park Place, Inc.’s Response and Objection to Joint Motion for Interpleader.”

Montoya explained that 1) the Temporary Injunction had maintained the status quo as to the Deposited Funds 2) in January of 2021, he had discussions with counsel for Weststar and Flores and provided them with “evidence of where the money was ... in a Wells Fargo account” and 3) “on May 17th [he] provided [counsel for Weststar and Fidelity] an updated letter from Wells Fargo Bank confirming that the funds are still there.” (MR, Tab P, Ex. B, p. 8-9). Counsel for defendants further confirmed in response to inquiry from Judge Spieczny that despite Flores’ pleadings to the contrary, the money was never transferred to Mexico. (MR, Tab P, Ex. B, p. 10). Notably, counsel for Flores spoke next, and he made no mention of his pleadings about the money being transferred to Mexico, only voicing concern about having seen just one letter from Wells Fargo evidencing the one account containing \$700,000. Counsel for Weststar pointed only to Flores’ affidavit purporting to assert that the money had been transferred to Mexico but acknowledged that Parsa “may have a different position.” (MR, Tab P, Ex. B, p. 11-13). Last, counsel for Fidelity admitted the Joint Motion was filed for security and not because of any evidence the Deposited Funds were in any danger:

MR. WILLEY [Counsel for Fidelity]: We do it for security and also for - - you know, just to ensure that, you know all the parties’ interest in the matter is addressed.

¹³ “Keyvan Parsa M.D. and Montoya Park Place, Inc.’s Motion for Reconsideration & Abatement of Order Granting Joint Motion for Interpleader.”

So, you know, I know Mr. Parsa hasn't done anything to date to raise concerns, but, you know, in - - in fact, if, you know, the - - the relief that we were requesting is not granted, you know, there's no assurances, Your Honor, that, you know - -

THE COURT: I understand.

MR. WILLEY: Yeah. So - -

THE COURT: He could do something tomorrow.

MR. WILLEY: Exactly. And so in that regards, I don't think saying that he hasn't done anything to date is grounds to vacate that order...

(MR, Tab P, Ex. B, p. 15-16).

Counsel for defendants then called Parsa to testify. Parsa confirmed 1) knowledge of the Injunction and its terms, 2) he had followed the terms "One hundred percent," 3) the money had never been transferred to Mexico (or anywhere else outside the country), 4) was always in Wells Fargo Bank, 5) that all the money was still in the Wells Fargo accounts (but that he had only obtained a letter as to one account due to short notice), 6) he was willing to share "all that information with [the other parties]," 7) he had never transferred any of the money out of the accounts since the injunction was entered, and 8) \$1,038,000 remained in the accounts. (MR, Tab P, Ex. B, p. 17-21). During cross examination, counsel failed to illicit any evidence Parsa had acted in any way violative of the Injunction or that the Deposited Funds were otherwise at risk of loss or depletion. (MR, Tab P, Ex. B, p. 23-26). Moreover, Exhibit B to the Joint Motion clearly evidences the

sums of \$700,000 and \$338,000, respectively, were deposited into two accounts at Wells Fargo on July 20, 2020, well before the filing of the lawsuit on September 16, 2020 and remained on account as of the date of the letters, January 14, 2021—and before the Injunction was rendered on January 20, 2021 (and filed of record on January 27, 2021). (MR, Tab K, Ex. B).

Finally, despite conceding there was no risk of loss or depletion of the funds, Judge Spieczny concluded there was no prejudice in placing the monies in the registry:

THE COURT: ... And, Doctor, I – here is how I think I should rule, and I want to explain this to you. I do not have a basis for thinking that you're going to move that money, and I do not have any basis to think you're going to do anything devious or that you're going to do anything sneaky or inappropriate. And I take and give full credibility to everything you have said, that you are honoring the injunction and that you intend to continue to honor the injunction.

But I do understand the apprehension and the fear of these - - these other lawyers and their clients who don't know you and, you know, their interest in wanting to get just some more security just in case you were to do something with that money.

And so I'm going to deny the motion to abate that order. I don't know if I need to do another order confirming that. I think the order was originally in place. And I will accept full responsibility for the confusion that has occurred here.

...But I think at this stage of the proceedings, what we are going to do is leave the original order to deposit the money into the registry of the Court in place.

That order will allow the doctor and Mr. Miranda to ask for access to it at any time. And, you know, you would be free, if there

was a need that arose, for - - to come in and say, We need relief from this order, and we'd have a hearing and I'd rule on it at that time. But right now I think the most cautious thing to do is to go ahead and just leave the order in place.

(MR, Tab P, Ex. B, 29-31). The court further orally ordered the Deposited Funds be deposited into the registry of the court no later than ten (10) days from the date of the hearing (i.e., by May 28, 2021). (MR, Tab P, Ex. B, p.31).

On May 28, 2021, Parsa and Montoya filed a second Motion to Reconsider specifically addressing the requirements of a petition for interpleader under Rule of Civil Procedure 43—which were not present or met in this case—and urging that withdrawal of the Deposited Funds would i) result in a 4.5% penalty (as the monies were in money market accounts), ii) would result in loss of a credit line (as the monies had been pledged to open the credit), iii) require immediate payment of the monies borrowed (of \$180,000), and iv) that the present injunction was sufficient protection.¹⁴ (MR, Tab O).

In response, Fidelity filed its Motion for Contempt¹⁵ and Weststar its Objection¹⁶ to the second Motion for Reconsideration now asserting as the basis for deposit into the registry the court's inherent authority "if there is evidence that

¹⁴ The second Motion to Reconsider was filed prior to receipt of the Transcript of the May 18, 2021, Motions Hearing.

¹⁵ "Motion for Contempt of Court and for Sanctions" filed on June 7, 2021. Parsa and Montoya filed their "Defendants' Response to Motion for Contempt of Court and Request for Sanctions" on July 5, 2021. (MR, Tab R).

the funds are in danger of being lost or depleted.” (MR, Tab P & Tab Q). Weststar argued that the Deposited Funds were in danger of being lost or depleted because “[t]he Defendants have apparently already transferred the funds that are the subject of the Injunction Orders,” i.e., the funds are pledged as security for a Priority Credit Line Agreement in the name of Westmount Group which is not a party to the suit. The Objection goes on to allege pledge of the funds constituted a transfer as it created a lien. (MR, Tab Q). However, the credit line was created on August 8, 2020 (MR, Tab O, Ex. A), again, well before the filing of the lawsuit and the date of the Injunction; and as Exhibit B to the Joint Motion evidences, the Deposited Funds were placed on deposit on July 20, 2020 in the name of Westmount Group, Inc.¹⁷, a non-party—which facts were made known to Fidelity and Weststar in January 2021—and in which accounts the funds *remain on deposit*. (MR, Tab K, Ex. B; Tab P, Ex. B p. 17-21). In addition, the Joint Motion and Order specifically reference as the “Deposited Funds” to be deposited into the registry “the two (2) separate Treasury Money Market Funds with Wells Fargo Bank, N.A., in amounts of at least \$338,000 and \$700,000, respectively (the

¹⁶ “Weststar Title, LLC’s Objection to Keyvan Parsa M.D. and Montoya Park Place, Inc.’s Motion for Reconsideration and to Abate Joint Order to Compel Interpleader” filed on June 15, 2021.

¹⁷ The true and correct name of the entity holding the credit line is Westmount Group, Inc. not Westmount Group, LLC as the latter entity does not exist. (MR, Tab S, “Keyvan Parsa and Montoya Park Place, Inc.’s Amended Reply to Albert Flores’ and Weststar Title, LLC’s Response to Defendants’ Motion for Reconsideration and to Abate Joint Order to Compel Interpleader” at n. 7; Tab T, p. 18).

“Deposited Funds”).” (MR, Tab L). In other words, the funds identified, and the subject of the letters/accounts contained, in Exhibit B to the Joint Motion. (MR, Tab K, Ex. B).

On July 8, 2021, the trial court held a hearing on the *second* Motion to Reconsider (and Fidelity’s Motion for Contempt).¹⁸ The only evidence presented at the hearing was Parsa’s testimony.¹⁹ Parsa testified that the Deposited Funds i) were originally deposited on July 20, 2020, in the name of Westmount Group, Inc., ii) pledged to the line of credit in August of 2020, iii) remained on deposit as of July 8, 2021 in the same accounts as reflected in Exhibit B to the Joint Motion, and, iv) since issuance of the Injunction, there had likewise been no change “in where these monies [were] deposited [or] in what name.” In addition, Parsa testified that withdrawing the funds from the accounts would incur a 4.5% penalty, tax consequences, and would be in breach of the credit line agreement causing the additional expense of immediate payment of the funds borrowed against the credit line (approximately \$180,000). (MR, Tab T, p. 18-21, 50-54). Cross-examination did not illicit contrary evidence. (MR, Tab T, p. 22-35). Ultimately, the court ordered \$750,000 be deposited into the registry of the court within ten (10) days—**on or before July 19, 2021**—with a contingent bond equal to the early withdrawal

¹⁸ Transcript of Motions Hearing, dated July 8, 2021 (the Transcript incorrectly states that the date of the hearing was *June* 8, 2021). (MR, Tab T).

penalty (4.5%), if applicable, on the total funds on deposit. (MR, Tab T, p. 50-57). Finally, the court asked that the parties bring any issues before it prior to July 19th. Thereafter, on July 14, 2021, the court held a hearing where the issue of redeeming the shares in the accounts presented a potential delay in the eventual withdrawal of the funds—which could take 10-15 days.

Judge Spieczny left the prior order in place but modified it i) to allow counsel for Parsa and Montoya to alert the court and the parties about the maturity date (in the event it was July 20, 2021) and whether waiting to withdraw the funds on that date might avoid penalty, ii) order defendants to initiate the process to redeem/withdraw the funds, and iii) reserved any contempt until July 19, 2021. Finally, Judge Spieczny admitted defendants' Exhibit 1, updated statements/letters from Wells Fargo Bank, evidencing the Deposited Funds remained on account as of July 14, 2021 (in the sums of \$338,000 and \$700,000, respectively). (MR, Tab U).

It is about the Joint Order which Relators complain and from which they seek relief.

SUMMARY OF THE ARGUMENT

A trial court may order deposit of funds into the registry of the court in certain limited circumstances one being where there is a danger of loss or depletion

¹⁹ Additionally, undersigned counsel asked that the court take judicial notice of the

of specific funds which are in dispute. The only evidence before the trial court showed that Relators had at all times—and consistent with the agreed Injunction—safeguarded the disputed funds and the funds were in no danger of being lost or depleted. Nevertheless, the trial court issued an order requiring deposit of the funds into the registry to provide security for the opposing parties' claims. While this action may be laudable, because there is no evidence of risk of loss or depletion, the trial court's actions were in error constituting an abuse of discretion. The trial court's order should be vacated and mandamus issue.

ARGUMENT AND AUTHORITIES

I. Standard of review.

“Mandamus relief may be available if the relator establishes a clear abuse of discretion for which there is no adequate appellate remedy.” *N. Cypress Med. Ctr. v. St. Laurent*, 296 S.W.3d 171, 178-79 (Tex.App.—Houston [14th Dist.] 2009, orig. proceeding) (citing *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex.2004) (orig. proceeding)). The court of appeals will not disturb a trial court's resolution of disputed fact matters, but the trial court has no discretion in determining what the law is or in applying the law to the facts. *Id.* (citing *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992) (orig. proceeding)).

Unless a party is seeking issuance of writ of attachment, a trial court has the

pleadings on file as well as the exhibits thereto. (MR, Tab T, p. 39).

power to order deposit in the court registry of specific funds *only when* such funds are in danger of being lost or depleted:

A trial court has two routes of authority to order money to be deposited in the registry of the court. The court may, in compliance with section 61.001 of the Texas Civil Practice and Remedies Code, issue a writ of attachment. The court may also, in exercise of its inherent authority “order a party to pay disputed funds into the court’s registry if there is evidence the funds are in danger of being ‘lost or depleted.’” *In re Reveille Resources (Texas), Inc.*, 347 S.W.3d 301, 304 (Tex.App.—San Antonio 2011, orig. proceeding) (citing *Castilleja v. Camero*, 414 S.W.2d 431, 433 (Tex.1967)).

Zhao v. XO Energy LLC, 493 S.W.3d 725, 736 (Tex.App.—Houston [1st Dist.] 2016, no pet.). “When there is insufficient evidence presented that the ‘funds are in danger of being ‘lost or depleted,’” however, the trial court abuses its discretion by ordering funds deposited in the registry of the court and mandamus relief from such an order is appropriate. *Id.* (citing *In re Reveille Resources (Texas), Inc.*, 347 S.W.3d at 304 (trial court abused its discretion when there was no evidence of possible depletion of funds and trial court based injunction solely on statement by counsel during hearing rather than evidence)). *See also N. Cypress Med. Ctr.*, 296 S.W.3d at 178-79. (trial court abused its discretion when there was no evidence that funds at issue were at risk of being lost or depleted, but only that disputed partnership funds were in same bank account that partnership actively used to fund several business activities.).

II. The trial court erred when it ordered Relators to deposit \$750,000 in the registry of the court where there was no evidence the funds were in danger of being lost or depleted

The trial court's order i) fails for lack of any evidence the funds at issue were in danger of being lost or depleted, ii) was based on providing security to the other parties in the nature of pre-judgment writ of attachment, iii) requires a non-party to deposit the disputed funds, and iv) fails to recognize the Relators initially consented to, and have since complied with, the Injunction which has proven sufficient to protect the parties.

No Evidence Funds in Danger of Being Lost or Depleted

In the Joint Motion, RPI identify and request certain funds, the "Deposited Funds," be placed in the registry. More specifically, Weststar and Fidelity identify the funds as those on deposit in the accounts at Wells Fargo Bank and depicted in the statements/letters attached as Exhibit B to the Joint Motion. (MR, Tab K & Ex. B). Furthermore, the Joint Order similarly identifies the Deposited Funds as those on deposit in "the two (2) separate Treasury Money Market Funds with Wells Fargo Bank, N.A., in amounts of at least \$338,000 and \$700,000, respectively (the "Deposited Funds")." (MR, Tab L).

Therefore, as to the Deposited Funds, the evidence before the court establishes:

- i) The Deposited Funds (as a portion of the sales proceeds) were originally deposited in Montoya Park Place, Inc.'s account at Western Heritage Bank on or about July 2, 2020 (MR, Tab C ¶ 16);
- ii) On July 20, 2020, Parsa deposited the Deposited Funds into the Wells Fargo Bank accounts in the name of Westmount Group, Inc. (MR, Tab T, p. 18-21);
- iii) The Deposited Funds were never transferred to Mexico or anywhere else outside of the United States (MR, Tab P, Ex. B, p. 19);
- iv) Parsa/Montoya's counsel apprised Weststar and Fidelity of the negotiations with Flores' counsel in January 2021 resulting in the Restraining Order and Injunction, including where the funds were on deposit (MR, Tab P & Ex. B, p. 8-9; MR, Tab K, Ex. B);
- v) On April 19, 2021, the parties mediated the case, and there were no claims/concerns raised as to any breach or violation of the Injunction (MR, Tab N ¶ 7);
- vi) The Joint Motion (of April 21, 2021) attached Exhibit B, the letters/statements of the Wells Fargo Bank accounts, evidencing the Deposited Funds were deposited on July 20, 2020, and remained in the accounts on January 14, 2021 (before the Injunction was rendered on January 20, 2021) (MR, Tab K, Ex. B.)
- vii) On May 17, 2021, counsel for defendants provided counsel for Weststar and Fidelity with an updated letter from Wells Fargo Bank confirming the Deposited Funds were still on deposit (MR, Tab P, Ex. B, p. 8-9);
- viii) The Deposited Funds remained in the accounts as of May 18, 2021, in the sum of \$1,038,000 (MR, Tab P, Ex. B, p. 19-21);
- ix) Parsa had "[o]ne hundred percent" complied with the Injunction as of May 18, 2021 and no monies had been transferred from the accounts since the injunction was entered (MR, Tab P, Ex. B, p. 20);
- x) Counsel for Fidelity admitted as of May 18, 2021, "Parsa hasn't done anything to date to raise concerns" (MR, Tab P, Ex. B, p. 15-16);

- xi) Judge Spieczny acknowledged there was no evidence the Deposited Funds were in danger of being lost or depleted (MR, Tab P, Ex. B, p. 29-31);
- xii) On July 8, 2021, Parsa confirmed the Deposited Funds were originally deposited on July 20, 2020, in the name of Westmount Group, Inc., pledged to the credit line in August of 2020, and remained on deposit in the same accounts as reflected in Exhibit B to the Joint Motion (MR Tab T, p. 18-21,50-54); and
- xiii) Letters/statements from Wells Fargo Bank updated as of July 14, 2021 confirm \$1,038,000 remain on deposit (MR, Tab U).

It cannot be disputed that the funds sought by RPI to be deposited into the registry—the Deposited Funds—were made known to them by counsel for Relators in January of 2021, in conjunction with preparation of the Injunction by the letters/statements dated January 14, 2021, and attached to the Joint Motion at Exhibit B. In addition, that counsel for Weststar and Fidelity felt comfortable that the Deposited Funds remained on account is evident in that they asked the court to enter the Joint Order which of course also described the Deposited Funds as those on account at Wells Fargo Bank in the name of Westmount Group, Inc. And, at the hearing on May 18, 2021, they were unable to point to any evidence the funds were in danger of being lost or depleted. Judge Spieczny too acknowledged there was no evidence Parsa had violated the terms of the Injunction or that he intended to move the money or to otherwise engage in any wrongdoing. Rather, he and counsel for Fidelity desired to provide security for the parties' claims. Finally,

since May 18, 2021, it is undisputed the funds remain on account—and have remained so since July 20, 2020, before the lawsuit was filed. Quite simply, there is no evidence the Deposited Funds are in danger of being lost or depleted.

Moreover, recent claims by RPI that the monies were “transferred” to Westmount Group, Inc. indicating a violation of the injunction (MR, Tab Q ¶ 9) are belied by the fact RPI knew as of January 14, 2021, that the monies were on deposit in the name of Westmount, and had been since July 20, 2020, and yet still they requested these funds be placed in the court registry. Weststar and Fidelity were under no misimpression, nor have they been, about the whereabouts and character of the Deposited Funds. Likewise, to assert that the pledge of the funds to the credit line in August 2020 constitutes a transfer by creation of “*lein*” (MR, Tab Q ¶ 10) again ignores that the Deposited Funds remain in the same form they did in August 2020, January 2021 (at the time of the Temporary Injunction), and, most recently, as of July 14, 2021.

This case is analogous to *North Cypress Medical Center v. St. Laurent*, where St. Laurent, a doctor, attempted to prevent the sale of his profits-only ownership interest in a hospital’s limited partnership. St. Laurent was subject to an agreement that provided the partnership, “at its sole option,” could sell his shares for several and various reasons, including breach of the agreement. The partnership later notified him that he had breached a non-competition clause and

that it intended to sell his shares. In response, he filed suit seeking an injunction preventing the sale. The trial court granted the injunction and ordered North Cypress “to pay into the registry St Laurent’s portion of any future partnership distributions.” 296 S.W.3d at 174. Despite that the undisputed evidence suggested that the funds at issue were on deposit in a bank account that the partnership could use to fund several activities, including reinvestment of funds into the hospital’s physical plant, i.e., from “Available Cash,” (the same source used to pay partner distributions); the Court found 1) the funds were not shown to be in danger of being lost or depleted (because the funds were being reinvested) and 2) there was no showing of “the extent, if any, to which the available cash may be dwindling because of the capital improvements.” *Id.* at 179.

Here, assuming *arguendo* that the Deposited Funds are “encumbered” by having been pledged to secure the credit line, there is no evidence of the extent, if any, that the amount borrowed (\$180,000) has compromised the Deposited Funds in any way,²⁰ that the credit line is in default (or in danger of default), or that there is any intent or need to withdraw the funds. In fact, as set forth above *ad nauseum*, the Deposited Funds have remained on deposit in the Wells Fargo accounts during

²⁰ In fact, the trial court reduced the amount to be deposited to \$750,000 to accommodate the prospect of the need to immediately pay the \$180,000 to satisfy the amounts borrowed on the credit line once the funds were withdrawn and the terms of the credit line breached. (MR, Tab T, p. 51-56). RPI cannot have it both ways. If payment of \$180,000 upon withdrawal is not a risk to the Deposited Funds, then leaving the funds on deposit, even encumbered to \$180,000,

the entire pendency of the case and up until as recently as July 14, 2021. Moreover, the trial court found Parsa credible in his testimony that he had always complied with the injunction and intended to. (MR, Tab P, Ex. B, 29-31).

The Trial Court's Order was an Impermissible Attempt to Provide Security for the claims of RPI

Counsel for Fidelity urged the trial court to order the funds be deposited not because of any danger of loss or depletion but as security for any eventual judgment:

MR. WILLEY [Counsel for Fidelity]: We do it for security and also for - - you know, just to ensure that, you know all the parties' interest in the matter is addressed.

(MR, Tab P, Ex. B, p. 15-16). And, in announcing his decision, Judge Spieczny transparently provided security, not risk, as his rationale:

THE COURT:

But I do understand the apprehension and the fear of these - - these other lawyers and their clients who don't know you and, you know, their interest in wanting to get just some more security just in case you were to do something with that money.

(MR, Tab P, Ex. B, 29-31). However, the laudable goal of providing security is not a substitute for the lack of evidence of the risk of loss or depletion of the funds and amounts to an improper prejudgment writ of attachment leaving Relators with no adequate remedy at law or by appeal. *See Noteboom v. Gray*, 111 S.W.3d 794,

prevents no present risk, especially given that there is no evidence of any default as to the credit

798 (Tex.App—Fort Worth 2003, orig. proceeding) (“[T]he record reflects the trial court was attempting the admirable goal of safeguarding sufficient assets necessary to satisfy any future money award on final judgment of the case; however, by refusing to permit Noteboom the opportunity to introduce evidence concerning the merits of the claims prior to the trial court's setting of the bond amount, the trial court failed to afford Noteboom the procedural due process to which he was entitled”). Here, as in *Noteboom*, Relators here have no adequate remedy by appeal with respect to the loss of the funds required at the time of withdrawal of the Deposited Funds—and the contingent bond offers no protection for this loss which amounts to a prejudgment attachment—such that mandamus is appropriate. *Id.* (citing *See S.R.S. World Wheels, Inc. v. Enlow*, 946 S.W.2d 574, 575 (Tex.App-Fort Worth 1997, orig. proceeding) (granting mandamus relief in connection with a prejudgment writ of attachment under which relator had no adequate remedy at law by which to obtain possession of its property)).

The Order Requires Relators to Deposit Funds which are in Possession of a Non-party

Relators agreed to and have complied with the Injunction, but it is undisputed the Deposited Funds are in possession of Westmount Group, Inc. and always have been. (MR, Tab T, p. 29). RPI were provided the opportunity to be party to the Injunction and were provided copies of the statements/letters from

Well Fargo identifying the accounts and account holder of the Deposited Funds. Nevertheless, RPI chose not to join the Injunction or add Westmount Group, Inc. as a party to the lawsuit. Furthermore, the Joint Order purports to order payment into the registry of funds which Relators do not presently possess. Putting aside for the moment the infirmities addressed above, the Joint Order cannot require Relators to perform an act for which they neither have the ability nor the authority. And, Westmount Group, Inc. cannot be compelled to turn over funds without due process.

The Temporary Injunction Provides Sufficient Protection of the Deposited Funds

Parsa and Montoya are parties, and in fact agreed, to the Temporary Injunction. More importantly, there is no evidence of any actual or perceived breach of the terms of the Injunction, and the trial court was convinced Parsa had no intention to violate its terms. Therefore, although Westmount Group, Inc. is not a party to the Injunction, given Relators' consent to its terms, the Deposited Funds are protected even though held by Westmount Group, Inc. because if Relators withdrew the funds, they would be violation of the Injunction. Moreover, Relators agreed to terms in the Injunction which would arguably be an abuse of discretion for a trial court to order be enjoined. *See N. Cypress Med. Ctr.*, 296 S.W.3d at 178 (granting relief from mandamus requiring deposit in the court registry funds representing shares *and injunction* prohibiting sale or transfer of shares);

Noteboom, 111 S.W.3d at 798. Therefore, Relators, by their agreement, have provided the parties with more protection than they would otherwise be entitled by injunction, and by their performance, Relators have complied with the Injunction—providing actual protection of the parties', including RPI's, claims to the disputed funds.

Conclusion

There is no evidence that the Deposited Funds are in danger of being lost or depleted, the Joint Order was entered in error, and was an abuse of discretion. In addition, Relators and/or Westmount Group, Inc. face tens, perhaps hundreds of thousands, of dollars in financial losses, if they are required to withdraw the Deposited Funds and pay them into the registry of the court—for which they have no adequate remedy by appeal. Furthermore, despite that the Deposited Funds are in possession of non-party Westmount Group, Inc., Relators, in addition to losses to the corpus of the funds, face the imminent consequence of being held in contempt.

The issuance of the Joint Order was in error and constitutes an abuse of discretion. Thus, the Joint Order should be vacated and mandamus granted.

PRAYER

For these reasons, Relators respectfully request that the trial court's order ordering deposit of the disputed funds into the court registry be vacated, that same

be stayed pending this Court's decision on this petition and the case be remanded to the trial court for further proceedings and that Relators be awarded its costs of court.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on the 17th day of July 2021 pursuant to the Court's Notice of Electronic Procedures established for the El Paso County Courts via e-mail:

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/s/Troy C. Brown
Troy C. Brown

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Petition for Writ of Mandamus complies with the type-volume limitations of TRAP Rule 9.4. The petition contains 5,658 words, excluding the parts of the petition exempted by 9.4(1); and this petition complies with the typeface requirements of 9.4(e) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14-point.

/s/Troy C. Brown
TROY C. BROWN

VERIFICATION

STATE OF TEXAS)
COUNTY OF EL PASO)

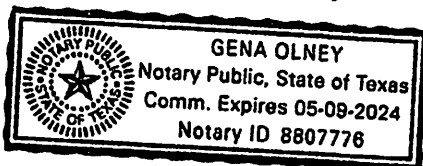
Before me, the undersigned notary, on this day personally appeared Troy C. Brown, who after being duly sworn, stated:

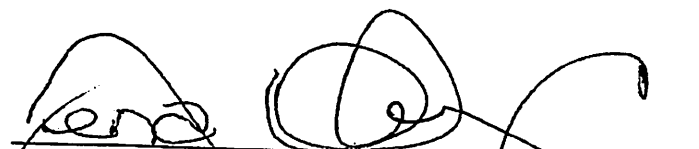
"My name is TROY C. BROWN, I am over the age of 18 of sound mind, and I am fully competent to testify to the matters set forth herein. I have read the foregoing, including the Mandamus Record and Appendix referenced herein, and the documents attached hereto at the Appendix and attached as the Mandamus Record are true and correct copies of documents of record in the case and are what they purport to be."



Troy C. Brown

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this
the 17th day of July 2021.





Notary Public in and for the State of Texas

My commission expires

May 9, 2024

CERTIFICATION

I hereby certify that the foregoing Petition for Writ of Mandamus complies with TRAP Rule 52.3(j). I hereby certify that I have reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

/s/Troy C. Brown
TROY C. BROWN

NO. _____

IN THE COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

In Re:

**KEYVAN PARSA, M.D. and
MONTOKA PARK PLACE, INC.**

Relators.

Original Proceeding Arising Out of
the 327th Judicial District Court of El Paso County, Texas
No. 2020DCV2997
(Hon. Thomas Spieczny)

Appendix

APPENDIX:

**Appx. Tab 1. Joint Order to Compel Interpleader and Hold Funds into
Registry of Court (April 26, 2021)**

TAB 1

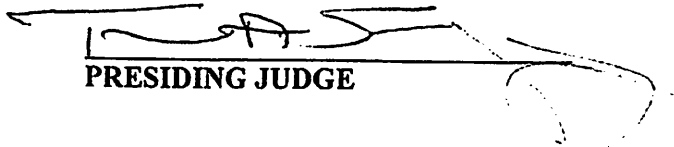
Registry the two (2) separate Treasury Money Market Funds with Wells Fargo Bank, N.A., in amounts of at least \$338,000.00 and \$700,000.00, respectively (the "Deposited Funds").

IT IS FURTHER ORDERED that all monies deposited by Defendants, Keyvan Parsa, M.D. and Montoya Park Place, Inc, into the Court's Registry and shall remain in the Court's Registry, and the Court shall not release the monies until a resolution is reached between the parties or thirty (30) days after a final, non-appealable Order has been entered in this suit.

IT IS FURTHER ORDERED that this Order is without prejudice to Plaintiff, Albert Flores, Intervenor-Plaintiff Fidelity National Title Insurance Company, Intervenor-Plaintiff WestStar Title, LLC and Defendants, Defendants, Keyvan Parsa, M.D. and Montoya Park Place, Inc., and Intervenor-Defendants, Keyvan Parsa, M.D. and Montoya Park Place, Inc, Albert Flores, and Deborah Jordan (collectively hereinafter referred to as the "Parties"), in recovering any and all funds deposited into the Court's Registry and any judgment against the Parties, claims and causes of action asserted or which could be asserted by the Parties in this suit.

IT IS FURTHER ORDERED that the Parties do not waive or release and are not estopped or otherwise prevented from recovering their claims and causes of action asserted or which could be asserted in this suit from all or any part of the funds held in the Court's Registry and any judgment.

SIGNED this 26 day of April, 2021.


PRESIDING JUDGE

SUBMITTED BY AND AGREED AS TO FORM AND SUBSTANCE:

//s// Michael J. Willey

MICHAEL J. WILLEY

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GREGORY T. BREWER

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Fidelity National Title Insurance Company

~And~

//s// James W. Brewer

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ATTORNEYS FOR INTERVENOR-PLAINTIFF

WestStar Title, LLC

EXHIBIT “G”



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE: KEYVAN PARSA, M.D. AND
MONTOKA PARK PLACE, INC.,

Relators.

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No. 08-21-00125-CV

AN ORIGINAL PROCEEDING

IN MANDAMUS

JUDGMENT

The Court has considered this cause on the Relators' petition for writ of mandamus against the Honorable Thomas Spieczny, visiting judge of the 327th District Court of El Paso County, and concludes that Relators' petition for writ of mandamus should be denied. We therefore deny the petition for writ of mandamus, in accordance with the opinion of this Court.

IT IS SO ORDERED THIS 4TH DAY OF AUGUST, 2021.

GINA M. PALAFOX, Justice

Before Rodriguez, C.J., Palafox, and Alley, JJ.



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE: KEYVAN PARSA, M.D. AND
MONTOKA PARK PLACE, INC.,

Relators.

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No. 08-21-00125-CV

AN ORIGINAL PROCEEDING

IN MANDAMUS

MEMORANDUM OPINION

Relators Keyvan Parsa, M.D., and Montoya Park Place, Inc. have filed a petition for a writ of mandamus asking this Court to overturn an order issued by the Hon. Thomas Spieczny, visiting judge of the 327th District Court, impounding certain funds in the court's registry pending resolution of a lawsuit. Relators also filed a motion for emergency relief from the order pending resolution of the mandamus petition on the merits. The motion for emergency relief and petition for writ of mandamus are denied.

To be entitled to mandamus relief, a relator generally must meet two requirements. First, the relator must show that the trial court clearly abused its discretion. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135 (Tex. 2004) (orig. proceeding). Second, the relator must demonstrate

that there is no adequate remedy by appeal. *Id.* at 135-36. The burden is on the relator to show he is entitled to mandamus relief. *See In re Ford Motor Co.*, 165 S.W.3d 315, 317 (Tex. 2005) (orig. proceeding).

After reviewing the mandamus petition and record, we conclude that Relators have failed to show entitlement to mandamus relief on this record. Accordingly, we deny the emergency motion and the petition for writ of mandamus.

GINA M. PALAFOX, Justice

August 4, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.

EXHIBIT “H”

From: ssather@bn-lawyers.com,
To: budkirk@aol.com,
Subject: RE: Westmount Group, Inc., Case No. 21-30633-HCM-11
Date: Tue, Sep 21, 2021 5:00 pm

I did not leave anything out. If you will notice, the debtor listed various notes receivable. Those assets take the place of the prior money market certificates.

From: E.P. Bud Kirk <budkirk@aol.com>
Sent: Monday, September 20, 2021 6:13 PM
To: Steve Sather <ssather@bn-lawyers.com>
Subject: Westmount Group, Inc., Case No. 21-30633-HCM-11

Dear Steve,

After reading the Schedules and Statement of Affairs in Westmount Group, Inc., I am just astounded.

Did you mean to leave the money market certificates out?

Is there any intention by PARSA to satisfy the claims of FLORES, FIDELITY, and WESTSTAR?

R.S.V.P.,

E.P. BUD KIRK

(915) 584-3773

The information in this electronic message is privileged and confidential information intended only for the use of the individual or entity addressee. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to Terrace Gardens, 600 Sunland Park Drive, Building Four, Suite 400, El Paso, Texas 79912 VIA the U.S. Postal Service.

Thank you.